

HOUSE FINAL STATUS

HB 571

4/29	TRANSMITTED TO SENATE		
	2ND READING GOVERNOR'S AMENDMENTS		
	CONCURRED	48	0
4/29	3RD READING GOVERNOR'S AMENDMENTS		
	CONCURRED	48	0
5/03	RETURNED TO HOUSE		
5/03	SIGNED BY SPEAKER		
5/03	SIGNED BY PRESIDENT		
5/03	TRANSMITTED TO GOVERNOR		
5/16	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 753		
	EFFECTIVE DATE: 7/01/91		

HB 570 INTRODUCED BY J. RICE

REVISE DRIVER'S LICENSE RE-EXAM AND
DUTY OF SIGNER FOR MINOR APPLICANT
BY REQUEST OF DEPARTMENT OF JUSTICE

2/02	INTRODUCED		
2/02	REFERRED TO HIGHWAYS & TRANSPORTATION		
2/04	FIRST READING		
2/19	HEARING		
2/20	COMMITTEE REPORT—BILL PASSED		
2/23	2ND READING PASSED	98	0
2/26	3RD READING PASSED	96	3
2/26	TRANSMITTED TO SENATE		
2/26	FIRST READING		
2/26	REFERRED TO HIGHWAYS & TRANSPORTATION		
3/26	HEARING		
3/27	COMMITTEE REPORT—BILL CONCURRED		
4/03	2ND READING CONCURRED	50	0
4/04	3RD READING CONCURRED	50	0
4/11	RETURNED TO HOUSE		
4/11	SIGNED BY SPEAKER		
4/11	SIGNED BY PRESIDENT		
4/11	TRANSMITTED TO GOVERNOR		
4/15	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 419		
	EFFECTIVE DATE: 10/01/91		

HB 571 INTRODUCED BY J. RICE

REVISION TO MOTOR VEHICLE HABITUAL OFFENDER STATUTES
BY REQUEST OF DEPARTMENT OF JUSTICE

2/02	INTRODUCED		
2/02	REFERRED TO HIGHWAYS & TRANSPORTATION		
2/04	FIRST READING		
2/19	HEARING		
2/25	COMMITTEE REPORT—BILL PASSED		
2/26	2ND READING PASSED	91	9
2/27	3RD READING PASSED	92	7
2/27	TRANSMITTED TO SENATE		
3/04	REFERRED TO JUDICIARY		
3/04	FIRST READING		
3/25	HEARING		
3/25	COMMITTEE REPORT—BILL CONCURRED		
3/28	2ND READING CONCURRED	49	0
4/01	3RD READING CONCURRED	49	0
4/03	RETURNED TO HOUSE		
4/03	SIGNED BY SPEAKER		
4/03	SIGNED BY PRESIDENT		
4/04	TRANSMITTED TO GOVERNOR		

4/08 SIGNED BY GOVERNOR
CHAPTER NUMBER 390

EFFECTIVE DATE: 10/01/91

HB 572 INTRODUCED BY J. RICE

GENERALLY REVISE COMMERCIAL OPERATOR
DUI STATUTES AND OTHER OFFENSES
BY REQUEST OF DEPARTMENT OF JUSTICE

2/02	INTRODUCED		
2/02	REFERRED TO HIGHWAYS & TRANSPORTATION		
2/04	FIRST READING		
2/19	HEARING		
2/21	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/23	2ND READING PASSED	89	11
2/26	3RD READING PASSED	82	17
	TRANSMITTED TO SENATE		
2/27	FIRST READING		
2/27	REFERRED TO JUDICIARY		
3/25	HEARING		
3/25	COMMITTEE REPORT—BILL CONCURRED		
3/28	2ND READING CONCURRED AS AMENDED	49	0
4/01	3RD READING CONCURRED	48	1
	RETURNED TO HOUSE WITH AMENDMENTS		
4/09	2ND READING AMENDMENTS CONCURRED	93	2
4/10	3RD READING AMENDMENTS CONCURRED	97	2
4/18	SIGNED BY SPEAKER		
4/19	SIGNED BY PRESIDENT		
4/19	TRANSMITTED TO GOVERNOR		
4/23	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 563		
	EFFECTIVE DATE: 10/01/91		

HB 573 INTRODUCED BY J. RICE

CLARIFY THE MOTOR VEHICLE CODE DEFINITION OF "CONVICTION"
BY REQUEST OF DEPARTMENT OF JUSTICE

2/02	INTRODUCED		
2/02	REFERRED TO HIGHWAYS & TRANSPORTATION		
2/04	FIRST READING		
2/19	HEARING		
2/20	COMMITTEE REPORT—BILL PASSED		
2/20	PLACED ON CONSENT CALENDAR		
2/23	OBJECTION TO CONSENT CALENDAR FILED (BILL PLACED ON 2ND READING)		
2/26	2ND READING PASSED AS AMENDED	90	9
2/27	3RD READING PASSED	90	10
	TRANSMITTED TO SENATE		
2/27	REFERRED TO JUDICIARY		
3/04	FIRST READING		
3/25	HEARING		
3/25	COMMITTEE REPORT—BILL CONCURRED		
3/28	2ND READING CONCURRED	49	0
4/01	3RD READING CONCURRED	44	5
	RETURNED TO HOUSE		
4/03	SIGNED BY SPEAKER		
4/03	SIGNED BY PRESIDENT		
4/03	TRANSMITTED TO GOVERNOR		
4/06	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 369		
	EFFECTIVE DATE: 10/01/91		

HB 574 INTRODUCED BY THOFT, ET AL.

REQUIRE REGISTRATION OF SITES RELATED
TO INSECTS AND PLANT PATHOGENS

HOUSE BILL NO. 571

INTRODUCED BY J. RICE
BY REQUEST OF THE DEPARTMENT OF JUSTICE

IN THE HOUSE

FEBRUARY 2, 1991	INTRODUCED AND REFERRED TO COMMITTEE ON HIGHWAYS & TRANSPORTATION.
FEBRUARY 4, 1991	FIRST READING.
FEBRUARY 25, 1991	COMMITTEE RECOMMEND BILL DO PASS. REPORT ADOPTED.
	PRINTING REPORT.
FEBRUARY 26, 1991	SECOND READING, DO PASS.
FEBRUARY 27, 1991	ENGROSSING REPORT.
	THIRD READING, PASSED. AYES, 92; NOES, 7.
	TRANSMITTED TO SENATE.

IN THE SENATE

MARCH 4, 1991	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
MARCH 25, 1991	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
MARCH 28, 1991	SECOND READING, CONCURRED IN.
APRIL 1, 1991	THIRD READING, CONCURRED IN. AYES, 49; NOES, 0.
	RETURNED TO HOUSE.

IN THE HOUSE

APRIL 1, 1991	RECEIVED FROM SENATE.
	SENT TO ENROLLING.
	REPORTED CORRECTLY ENROLLED.

1 HOUSE BILL NO. 571
 2 INTRODUCED BY [Signature]
 3 BY REQUEST OF THE DEPARTMENT OF JUSTICE

4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE REFERENCES
 6 TO THE DRIVER IMPROVEMENT PROGRAM WITHIN THE STATUTES
 7 CONCERNING HABITUAL TRAFFIC OFFENDERS; TO PROVIDE FOR AN
 8 ADDITIONAL REVOCATION OF THE DRIVER'S LICENSE OR DRIVING
 9 PRIVILEGE OF A PERSON CONVICTED AS A HABITUAL OFFENDER
 10 OPERATING A MOTOR VEHICLE; TO REPEAL THE REQUIREMENT THAT
 11 CERTAIN HIGH MISDEMEANORS BE CERTIFIED TO DISTRICT COURT;
 12 AMENDING SECTIONS 61-11-211, 61-11-212, AND 61-11-213, MCA;
 13 AND REPEALING SECTION 61-11-214, MCA."

14
 15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

16 **Section 1.** Section 61-11-211, MCA, is amended to read:

17 "61-11-211. Department to revoke license of habitual
 18 offender -- method of removal of points upon revocation.
 19 Upon receipt of a court order declaring an individual a
 20 habitual offender, the department shall revoke the driver's
 21 license or driving privilege of the individual named in the
 22 order for a period of 3 years from the date of the order,
 23 subject to the provisions of 61-2-302. Additionally, the
 24 department shall remove from that individual's record those
 25 habitual offender points which that were certified to the

1 county attorney in the certification required by 61-11-204."

2 **Section 2.** Section 61-11-212, MCA, is amended to read:

3 "61-11-212. Penalties. No A person who has been
 4 adjudged an a habitual traffic offender ~~shall~~ may not be
 5 issued a license to operate a motor vehicle in this state
 6 until:

7 (1) a period of 3 years has elapsed from the date of
 8 the final order of the court adjudging the person an a
 9 habitual traffic offender, subject to the provisions of
 10 61-2-302;

11 (2) the person has met ~~all~~ the requirements of all
 12 applicable laws and rules relating to the licensing of motor
 13 vehicle operators in this state; and

14 (3) the person files with the department, and maintains
 15 for a period of 3 years, proof of his financial
 16 responsibility in the limits required by law."

17 **Section 3.** Section 61-11-213, MCA, is amended to read:

18 "61-11-213. Habitual traffic offender operating motor
 19 vehicle guilty of misdemeanor. Any A person found to be an a
 20 habitual traffic offender under this part, and who
 21 thereafter operates a motor vehicle in this state while the
 22 order of the court prohibiting ~~such the~~ operation remains in
 23 effect, ~~shall be~~ is guilty of a misdemeanor, and upon
 24 conviction thereof shall be imprisoned for a period of not
 25 more than 1 year or fined not more than \$1,000, or both, and

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1 the department, upon receiving a record of the conviction of
2 a person under this section, shall extend the period of
3 revocation for an additional 1 year. However, in cases
4 wherein in which the prohibited operation of a motor vehicle
5 by an a habitual traffic offender is necessitated in a
6 situation of extreme emergency in order to save life, limb,
7 or property, he ~~shall~~ may not be ~~deemed~~ considered guilty of
8 a violation under this part."

9 NEW SECTION. Section 4. Repealer. Section 61-11-214,
10 MCA, is repealed.

-End-

APPROVED BY COMMITTEE
ON HIGHWAYS & TRANSPORTATION

1 HOUSE BILL NO. 571
2 INTRODUCED BY [Signature]
3 BY REQUEST OF THE DEPARTMENT OF JUSTICE
4
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE REFERENCES
6 TO THE DRIVER IMPROVEMENT PROGRAM WITHIN THE STATUTES
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8 ADDITIONAL REVOCATION OF THE DRIVER'S LICENSE OR DRIVING
9 PRIVILEGE OF A PERSON CONVICTED AS A HABITUAL OFFENDER
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22 order for a period of 3 years from the date of the order,
23 subject to the provisions of 61-2-302. Additionally, the
24 department shall remove from that individual's record those
25 habitual offender points which that were certified to the

1 county attorney in the certification required by 61-11-204."

2 **Section 2.** Section 61-11-212, MCA, is amended to read:
3 "61-11-212. Penalties. No A person who has been
4 adjudged an a habitual traffic offender ~~shall~~ may not be
5 issued a license to operate a motor vehicle in this state
6 until:
7 (1) a period of 3 years has elapsed from the date of
8 the final order of the court adjudging the person an a
9 habitual traffic offender, subject to the provisions of
10 61-2-302;
11 (2) the person has met ~~all~~ the requirements of all
12 applicable laws and rules relating to the licensing of motor
13 vehicle operators in this state; and
14 (3) the person files with the department, and maintains
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16 responsibility in the limits required by law."

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20 habitual traffic offender under this part, and who
21 thereafter operates a motor vehicle in this state while the
22 order of the court prohibiting such the operation remains in
23 effect, ~~shall be~~ is guilty of a misdemeanor, and upon
24 conviction thereof shall be imprisoned for a period of not
25 more than 1 year or fined not more than \$1,000, or both, and

SECOND READING

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1 the department, upon receiving a record of the conviction of
2 a person under this section, shall extend the period of
3 revocation for an additional 1 year. However, in cases
4 wherein in which the prohibited operation of a motor vehicle
5 by an a habitual traffic offender is necessitated in a
6 situation of extreme emergency in order to save life, limb,
7 or property, he ~~shall~~ may not be ~~deemed~~ considered guilty of
8 a violation under this part."

9 NEW SECTION. Section 4. Repealer. Section 61-11-214,
10 MCA, is repealed.

-End-

1 HOUSE BILL NO. 571
2 INTRODUCED BY Glenn
3 BY REQUEST OF THE DEPARTMENT OF JUSTICE
4
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE REFERENCES
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21 license or driving privilege of the individual named in the
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23 subject to the provisions of 61-2-302. Additionally, the
24 department shall remove from that individual's record those
25 habitual offender points which that were certified to the

1 county attorney in the certification required by 61-11-204."
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4 adjudged an a habitual traffic offender ~~shall~~ may not be
5 issued a license to operate a motor vehicle in this state
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12 applicable laws and rules relating to the licensing of motor
13 vehicle operators in this state; and
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2 a person under this section, shall extend the period of
3 revocation for an additional 1 year. However, in cases
4 wherein in which the prohibited operation of a motor vehicle
5 by an a habitual traffic offender is necessitated in a
6 situation of extreme emergency in order to save life, limb,
7 or property, he ~~shall~~ may not be ~~deemed~~ considered guilty of
8 a violation under this part."

9 NEW SECTION. **Section 4.** Repealer. Section 61-11-214,
10 MCA, is repealed.

-End-

HOUSE BILL NO. 571

INTRODUCED BY J. RICE

BY REQUEST OF THE DEPARTMENT OF JUSTICE

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE REFERENCES TO THE DRIVER IMPROVEMENT PROGRAM WITHIN THE STATUTES CONCERNING HABITUAL TRAFFIC OFFENDERS; TO PROVIDE FOR AN ADDITIONAL REVOCATION OF THE DRIVER'S LICENSE OR DRIVING PRIVILEGE OF A PERSON CONVICTED AS A HABITUAL OFFENDER OPERATING A MOTOR VEHICLE; TO REPEAL THE REQUIREMENT THAT CERTAIN HIGH MISDEMEANORS BE CERTIFIED TO DISTRICT COURT; AMENDING SECTIONS 61-11-211, 61-11-212, AND 61-11-213, MCA; AND REPEALING SECTION 61-11-214, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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(2) the person has met ~~all~~ the requirements of all applicable laws and rules relating to the licensing of motor vehicle operators in this state; and

(3) the person files with the department, and maintains for a period of 3 years, proof of his financial responsibility in the limits required by law."

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2 a person under this section, shall extend the period of
3 revocation for an additional 1 year. However, in cases
4 wherein in which the prohibited operation of a motor vehicle
5 by an a habitual traffic offender is necessitated in a
6 situation of extreme emergency in order to save life, limb,
7 or property, he ~~shall~~ may not be deemed considered guilty of
8 a violation under this part."

9 NEW SECTION. Section 4. Repealer. Section 61-11-214,
10 MCA, is repealed.

-End-

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON HIGHWAYS & TRANSPORTATION

Call to Order: By **CHAIRMAN BARRY STANG**, on February 19, 1991, at 3:00 p.m.

ROLL CALL

Members Present:

Barry "Spook" Stang, Chairman (D)
Floyd "Bob" Gervais, Vice-Chairman (D)
Ernest Bergsagel (R)
Robert Clark (R)
Jane DeBruycker (D)
Alvin Ellis, Jr. (R)
Gary Feland (R)
Mike Foster (R)
Patrick Galvin (D)
Dick Knox (R)
Don Larson (D)
Scott McCulloch (D)
Jim Madison (D)
Linda Nelson (D)
Don Steppler (D)
Howard Toole (D)
Rolph Tunby (R)

Staff Present: Valencia Lane, Legislative Council
Claudia Johnson, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

EXECUTIVE ACTION ON HB 680

Motion: REP. LARSON MOVED HB 680 DO NOT PASS.

Discussion: Ms. Lane distributed draft copies of the House Joint Resolution. **EXHIBIT 1**

CHAIRMAN STANG said he talked with the sponsor, **REP. LEE**, of HB 680. **REP. LEE** realized that it probably wasn't a wise thing to try to close Highway 35, between Polson and Columbia Falls, to truck traffic. **REP. LEE** proposed that the committee draft a resolution that will address some of the problems. The resolution is to work cooperatively with the users to develop local and regional safety programs to enable the full use of the highway for safe transportation. **CHAIRMAN STANG** said it is too late to submit the House Joint Resolution, unless there is a two-

thirds vote on the floor of the House to suspend the rules, it will die.

REP. LARSON said the problem with the bill and as it was pointed out in the last committee hearing, it isn't the truck drivers, but the private automobiles that are a hazard to the children.

REP. TOOLE said he is in favor of the bill. The road is narrow and has a lot of curves in it. There are trees right up to the edge of the road and this time of year, it has a lot of icy patches and is a hazard for any kind of traffic.

REP. FOSTER called the question. Voice vote was taken. Motion CARRIED 16 to 1 with REP. TOOLE voting no.

Motion/Vote: REP. BERGSAGEL MADE A SUBSTITUTE MOTION THAT HB 680 BE TABLED.

Vote: HB 680 BE TABLED. Motion CARRIED unanimously.

Motion/Vote: REP. MCCULLOCH made the motion to consider the House Joint Resolution that was drafted by REP. LEE and Ms. Lane.

Discussion: REP. FOSTER said it was his understanding that the parties involved were willing to work together on this matter, and asked if they didn't have this resolution, would they actually carry it through. CHAIRMAN STANG said that Dave Galt from the Highway Department, assured him that the department would be willing to work towards this problem, but they might not have the money to build the signs. If they could design the signs, and the trucking association and the Wood Products Association help pay for the them.

CHAIRMAN STANG asked Mr. Galt to comment on the building of the signs. Mr. Galt said they would be willing to work with the truck companies. If the department is responsible for the building of the signs, they would like to design the sign and message. He said the department thought that 3 signs would be sufficient to cover that road at a cost of \$13,000. He distributed a letter from the department that states their position. EXHIBIT 2 He suggested the trucking industry look into advertising on billboards, it would be cheaper.

REP. FOSTER asked Mr. Galt if the trucking industries were willing to pay the \$13,000 for these signs. Mr. Galt said he had spoke with them, and felt they could.

REP. MCCULLOCH asked what the message would be on the signs. Mr. Galt said the signs would read: Highway 35; list the school bus hours; and truckers be advised to take alternate route. He said the department is nervous about demanding the truckers take an alternate route, but do need to make them aware of the school bus hours.

CHAIRMAN STANG suggested that a letter be written to the Highway Patrol from the committee, stating it is a problem in that area and ask if maybe they could spend more time patrolling that highway.

REP. NELSON said it was a good idea to have the letter written, rather than work on this resolution.

REP. STEPPLER called the question. Voice vote was taken. Motion **FAILED** with **REP. TOOLE**, **REP. TUNBY**, **REP. MADISON** and **REP. GALVIN** voting yes.

REP. NELSON made a motion to have a letter drafted and sent to the Highway Patrol. Question was called. Voice vote was taken. Motion **CARRIED** unanimously.

HEARING ON HB 557

Presentation and Opening Statement by Sponsor:

REP. BOB REAM, House District 54, Missoula, said this bill is a result of a constituent, Louis Elliott, who was a prisoner of war (POW). He has been buying his own license plate with his POW number. When he went to renew his license plate that he has been purchasing under the disabled veterans statute. He was told he could purchase the disabled license plate for \$5 or buy the POW plate at a regular fee. This bill clarifies in section 1, the vehicle owner that meets the criteria in subsection 1 regarding prisoner of war criteria and in MCA 61-3-451, which is section 2 of this bill, must receive the plate provided for in section 1.

Proponents' Testimony:

Rich Brown, Administrator, Montana Veterans Affairs Division, said for years, the counties across Montana have allowed for 100% service connected disabled veterans, the option of paying fees pursuant to title 61-3-451, and if they decided on a different license plate, to either pay the additional costs, i.e., an addition \$25 would secure them a personalized license plate, or their option to choose another plate, e.g., POW or the handicap license plate. This procedure has allowed 100% service connected disabled veterans who wish a personalized license plate to utilize the benefit that has been given them under this title. Without the requirement of noting their disability to the entire state of Montana. The county procedure allowed 100% service connected disabled veterans the recognition as former POWs, rather than disabled veterans, and allowed those that are physically impaired veterans the ability to choose the internationally recognized handicap symbol rather than the DV plate. For the physically impaired, it meant if they were able to travel to another state or Canada, they did not risk a parking ticket with the internationally recognized handicap plate, which is not the case with the DV plate. On November 15, 1990, the Attorney General's office issued an opinion noting that 100%

disable veterans wishing to qualify for the tax exemption that the Legislature granted, had no options under the law and must take the DV plate or pay full taxes. He has had numerous complaints from the veterans, who have just found out this new strict opinion when trying to purchase their plates. A request has been sent to the Attorney General's office asking to change or hold of the opinion has been answered with an regrettable no. If Legislature passes HB 557 into law, it will restore for Montana's 100% veterans, the option the counties have given them for years. In his professional opinion, it will restore the Legislature's original intent if this legislation is passed. He said on behalf of the approximately 600, 100% disabled veterans, they wished to thank the committee and REP. REAM for their consideration on this issue. EXHIBIT 3 He urged the committee for passage of HB 557.

Dick Baumberger, Disabled American Veterans, stated his strong support for HB 557. He said the fiscal note shows there is no cost for this request.

Hal Manson, American Legion of Montana, urged the committee to concur on HB 557.

Walt Wheeling, Big Sky Chapter of POWs, said he was a POW in the same prison camp as Louis Elliott. He urged the committee's support for HB 557.

George Poston, United Veterans of Disabled Veterans, said he is in favor of HB 557.

Dean Roberts, Administrator, Motor Vehicle Division, said the division concurs on this bill. He said the law was unclear, and this bill clarifies it.

Opponents' Testimony: None

Questions From Committee Members: None

Closing by Sponsor:

REP. REAM urged the committee for passage of HB 557.

EXECUTIVE ACTION ON HB 557

Motion: REP. TUNBY MOVED HB 557 DO PASS.

Motion/Vote: REP. NELSON called the question. Voice vote was taken.

Vote: HB 557 DO PASS. Motion CARRIED unanimously.

HEARING ON HB 736

Presentation and Opening Statement by Sponsor:

REP. BRUCE MEASURE, House District 6, Kalispell, said this bill is an act establishing a local voluntary bicycle fee, and appropriating a portion of the gasoline license tax proceeds for matching recreational pathways. He said \$200,000 is already appropriated to build the recreational trails. What they want to do, is for the communities that wish to participate in the planning process for these paths to raise some of the money on their own through the voluntary bicycle license fees and apply for matching funds from the state.

Proponents' Testimony:

Stan Watkins, Flathead Area System of Trails (FAST), said they have been working on this type of legislation. They have found through research at the federal government level, and with President Bush' new highway bill, that there are a few dollars appropriated for this type of thing at the federal level. In order to use that money, an extensive study is done to prove their worth, or money from the communities or state level, than the federal government will match it. The small amount of money raised locally could turn into 3 or 4 times that amount if the state and federal government matched the amount raised. This is all voluntary and not mandated. The communities can set up their own programs. There are schools in the rural areas on the roads and highways and do not have any trails or bike paths, and this can be done with these funds.

Rod McNitt, Montana Environmental Information Center, said that bicycles are becoming a serious means of transportation for a number of people around Montana. He said Triple A took a survey last year, and most car trips were less than 3 miles round trip. If there was a better bike system, especially around the towns, there would be more people riding bicycles. By voting for more increased alternative transportation like bikes, a statement would be made that there be no increased drilling in the wilderness areas, and a lot less need for situations like the Persian Gulf. He urged the committee to pass HB 736.

Wayne Kruse, Missoula Bike Club, said they have 300 plus members in the bicycle club. He stressed how important bicycles are becoming in the communities and the need for safe trails. He urged a do pass for HB 736.

Linda Lee, Montana Audubon Legislative Fund, said that funding for recreation pathways is something every state should be considering if they already haven't. EXHIBIT 4

Opponents' Testimony:

Bill Salisbury, Department of Highways, said his opposition is

mostly technical. Diversion of highway funds need a 3/5 majority vote in the House and Senate to pull the money out for non-highway funds. The highway trust fund is spending \$20 to \$25 million more per year than what they are bringing in. He said some action will have to be taken in the 1993 Legislature to deal with this issue once the Federal Surface Transportation Act is decided. The department already programs \$200,000 per year for sidewalks and bikepaths throughout the state on there various projects. He said the department has plans for the next 5 years to spend approximately \$1 million on sidewalks and bikepaths.

Questions From Committee Members:

CHAIRMAN STANG said he carried HB 99, which deals with the extending of the shoulders to be used for riders on the highways. In the testimony on that bill in the Senate, a group called Bike Centennial, wanted the requirement taken out of the bill that required the bicyclist to use bike paths adjacent to roadways, because 78% to 80% of the accidents that occur with bicyclist, happen on the bike paths. Why is there a need for more paths if the bicyclists do not want to use them. **Mr. Kruse** said they are looking at bicycle paths that are not adjacent to the highways or roads.

CHAIRMAN STANG asked **Mr. McNitt** the same question. **Mr. McNitt** said that the bill is broad enough that it will allow for the development of safe routes, and that is what the Bike Centennial group was talking about. They want money put forward to develop the routes that are actually a part of the road. Places in California and Seattle have specific lanes designated for bikes that are well marked and have signs. This bill would allow for that broader interpretation of bikepaths to include safe routes as well.

CHAIRMAN STANG asked **REP. MEASURE** if it was his intention with this bill to not build bikepaths next to highways and build these trails that are away from the roads, or will this bill allow them to build the paths next to the highways. **REP. MEASURE** said it is his preference to build the paths off the highway, because the group he is involved with wants to build a path off of an abandoned rail line. The bill does not determine one way or another whether it be adjacent to an existing highway or a safe route. He thought it would something for the local communities to decide.

CHAIRMAN STANG said the committee had a bill for the four-wheelers, and because they have gas tax, the committee agreed they were entitled to used the paths. For every \$1 or \$10,000 that is taken out of the RIT, how much does it cost the state in federal funding and bonding. **Mr. Salisbury** said approximately \$4 for every \$1. The department matches about a 4:1 ratio. Every \$10,000 the department doesn't have to match federal funds would mean \$40,000 in federal funds. He said the bonding program is already completed, the only requirements he knew of was the

department is required to maintain $2\frac{1}{2}$ times their coverage, which means they have to have a revenue string $2\frac{1}{2}$ times larger than what the outstanding payment for the bonds are. He didn't think this would effect that ability. The bonds always have first priority on the paying of highway revenues.

Closing by Sponsor:

REP. MEASURE said the Highway Department has been very responsive in dealing with his group. One of the federal funding mechanisms, allows for certain percentages to be used for highway adjacent bikepaths. He said this bill could solve interurban transportation problems. If the Highway Department were to participate outside of their highways boundaries, it would solve some of the congestion problems.

HEARING ON HB 867

Presentation and Opening Statement by Sponsor:

REP. BOB GILBERT, House District 22, Sidney, said this is an act to grant the Public Services Commission (PSC) regulatory service over all roads in the state. He said this bill is changing, it doesn't do what he wanted. An amendment was drafted that corrects it. EXHIBIT 5 In most states, the PSC has regulatory authority over regulated motor carriers on all roads in the state. If a person is a regulated motor carrier hauling commercial or private commodities, is regulated on all roads, i.e., county. Montana only has this authority for public roads. If there is economic regulation, than the PSC should have the authority to follow that on all roads.

Proponents' Testimony:

Curt Laingen, Montana Motor Carrier's Association, said he is in support of HB 867.

Opponents' Testimony: None

Questions From Committee Members:

REP. LARSON asked REP. GILBERT to expound on the private roads he wants regulated. REP. GILBERT said it would effect all roads only for regulated commodities, i.e., agricultural, sand and gravel are not regulated commodities.

REP. FOSTER asked Dave Burchett from the PSC what their feelings were on this. Mr. Burchett said the commission does not have an official opinion.

Closing by Sponsor:

REP. GILBERT thanked the committee for a good hearing, and urged their support on HB 867.

HEARING ON HB 570Presentation and Opening Statement by Sponsor:

REP. JIM RICE, House District 43, East Helena, is an act to revise various driver licensing statutes. Sections 1 and 3 of the bill authorizes the Department of Justice to do an investigation upon receiving a complaint about someone's ability to drive. When someone receives a complaint about a person who is an unsafe driver, they are forced to issue that person a notice and demand a re-examination to re-take the driver's test. It can be traumatic for most people, and this bill ask for the opportunity to see if they can make a determination without the necessity of sending a notice and demanding the person come to the driver's station. Section 2 re-clarifies the liability statute in response to a Montana Supreme Court statute in regard to minors who are issued driver's licenses. Section 4 addresses the departments procedures in regards to convictions of people that are from out-of-state.

Proponents' Testimony:

Peter Funk, Attorney General's Office, said the four bills that REP. RICE has before the committee today are clean-up bills in four separate areas of the department. This bill deals specifically to the issuance of driver's license. Sections 1 and 3 allows people, i.e., Doctors, to write notes to the department when there is a concern about someone's driving ability based on their physical condition. The department does not want to be limited to giving these people a driving examination, e.g., a seizure disorder that is controlled by medication. The statute as currently written when medical information is received about someone, a card is sent that asks that person to come in for a driving test. Most of the time more information is needed from the Doctor and not give a driving test. The two sections allows the department the ability to either give the driver's examination or acquire more information from the Doctor. Section 2 addresses the process by which an adult consents to the licensing of a minor in the state. A teenager cannot receive a driver's license without the consent of an adult. The current statute says "to any adult who signs the driver's license", is liable if that teenage driver gets into any trouble. There isn't any anticipation in the existing statute for divorces with joint custody. With divorce rates reaching 50% in this society, the department is dealing with divorced parents that have joint custody. A signature is required of both parents, and when there is a case of joint custody it creates a problem. He said divorced parents should not be forced to deal with an issue like this. This bill identifies an adult who is financially responsible for that teenagers behavior. The signature of one parent is required or whomever has legal custody. On page 3, the language conforms to a 4 year old Montana Supreme Court case. It states that whenever a minor is involve in an automobile accident and liability insurance is in effect, the people that signed that

minor's application for a driver's license will never be held reliable. By inserting the language in subsection 2, lines 9 through 12, and deleting the language in subsection 3, it will do 2 things: 1) included the liability shield; and 2) let the department know when they could accept the signature of one parent as opposed to both parents. The language in section 4 states that when an out-of-state residence commits a traffic offense in Montana, and the department receives a report from the sentencing court, this bill will allow the department to send a copy of that report to the non-residence home state. The offenders would still go before the local Justice of the Peace, etc. to receive their sentences. When that report of conviction arrives at the department, instead of suspending a persons privilege to drive, let the state of residence do the sentencing.

Rich Brown, Administrator, Montana Veteran's Affairs Division, said he supports HB 570. The division is finding it difficult under current law to get the signature of both parents when one of the parents is in Saudi Arabia or Iraq.

Opponents' Testimony: None

Questions From Committee Members:

REP. ELLIS asked if the department also receive reports of blood levels of drugs. **Mr. Funk** said he has never seen that situation. There is a statutory provision which states in terms of driver's license being denied to someone that is an habitual drug addict.

CHAIRMAN STANG asked if a report is received from a Doctor to revoke the license of a senior citizen, can the license be automatically be taken away or can that person petition to make the department give them a test. **Mr. Funk** said a letter is written to ask that person to either submit to a driver's examination or if the condition was reported as a medical situation, than they would ask that person to submit a Doctor's statement. If they do not provide this information in a 30 day period they will be informed that their license will be suspended. **CHAIRMAN STANG** asked what the current law is for the parent who is liable for their child versus what this bill will do. **Mr. Funk** said he didn't think there was any difference. All this bill does is recognize that only one person needs to sign instead of two. If there is only one signature on the application, that person will be responsible, if there are two signatures, they would both be responsible. The statute does not say parent, it says the person signing the application is responsible.

REP. STEPPLER wanted to know what happened to patient/Doctor confidentiality, without the patient's consent, can the Doctor report this. **Mr. Funk** said an argument could be made with the statutory provision to create some kind of an exception. He said they do not receive a large amount of these requests, but the ones they have received are detrimental enough that the Doctor

HOUSE HIGHWAYS & TRANSPORTATION COMMITTEE

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felt it needed to be done. REP. STEPLER said once the reports are in the department and in the computer, would those reports be available to all who access those records. Mr. Funk that is not the case here. There is a listing in the statute about what constitutes a driving record. It is a different sort of identifying information that is actually included on the driver's license, records of convictions, and suspension actions.

Closing by Sponsor:

REP. RICE wanted to clarify a couple of points on confidentiality: 1) there is a statute on the books now that is not included in the bill that states when a Doctor diagnosis's a condition that would impair a person to safely operate a motor vehicle, he can voluntarily report for that person. He said there is a section that gives the Doctor immunity from liability for reporting that information, except as the statute states for damages occasion by gross negligence. The report is encouraged under state law, but is not mandatory under state law. He said it would be fine with the department for the committee to define where they want the liability to fall for the teenager drivers.

HEARING ON HB 571

Presentation and Opening Statement by Sponsor:

REP. JIM RICE, House District 43, East Helena, said this bill addresses the habitual traffic offender portion of the Motor Vehicle Law. Sections 1 and 2 are technical changes and does not change the law. The main part is section 3, which increases the administrative penalty for operating a motor vehicle while a person's license are suspended, i.e., declares a person as a habitual traffic offender. Administratively, the only thing that can happen now, is another 2 points are added to the cumulative total. This allows the penalty for a revoked license to be extended for an addition 1 year.

Proponents' Testimony:

Peter Funk, Attorney General's Office, said this bill is designed to deal with the habitual traffic offenders. These are people that accumulate statutory definition points, which is 30 conviction points in a 36 month period, i.e., 3 DUI's, 10 points a piece. A lot of speeding tickets at 2 and 3 points will do it. This bill is a cleanup of a few minor changes in the existing statutes. In sections 1 and 2, it states that the statutory provision allows for this person to go through a driver's improvement program, and than issued a probationary license pending the completion of their original period of suspension. In the habitual traffic offender context, the existing language says these peoples license will be revoked for 3 years. In section 2 is the language that states, may not be issued a license to operate a motor vehicle in this state until a period of 3 years has passed. These statutory provisions are

inconsistent. In one provision, if a person has been revoked for 3 years, and sits out 12 months of that 3 years, that person can apply for the program. If they attend regularly and complete the program they will receive a probationary license. This bill is to create a recognition with the court system in the state that these people upon completion of the program can receive a probationary license. If the court doesn't want a person to have a license at all in that three years, it has to be in the court order. Section 3 makes punishment consistent. There is a statute in the Motor Vehicle code which currently says if any person's license is suspended or revoked and they are caught driving the Motor Vehicle Division can add on a life period of suspension or renewal. If a person is an habitual traffic offender, and is caught driving while being an habitual traffic offender, there is no existing language that states the revocation period should be extended. Section 4 is the repeal of the bill. This particular statutory section dates from a time when the lower courts of Montana did not have jurisdiction over high misdemeanors. The department has been asked three times to write an Attorney General's opinion on what this section of the law means. He said after the courts were given high misdemeanor jurisdiction in 1985 or 1987, this section of the law does not mean anything anymore. He said in his personal opinion that this section is the most incomprehensible sections of Montana law that he has ever seen. He has a draft on the Attorney General's opinion that is waiting to be released that basically states that everyone should ignore this statute.

Opponents' Testimony: None

Questions From Committee Members:

REP. TOOLE asked Mr. Funk what is in 61-2-302 that is cross-referenced. Mr. Funk said that statute creates the driver improvement program. The program allows to give the habitual drivers a break.

Closing by Sponsor:

REP. RICE thanked the committee for a good hearing and urged their support for HB 571.

HEARING ON HB 572

Presentation and Opening Statement by Sponsor:

REP. JIM RICE, House District 43, East Helena, said this bill changes the commercial motor vehicle operation licensing statutes to do such things as to allow lifetime suspension of a commercial operator's license, and reduces the blood alcohol content from .04% down to any amount of blood alcohol. He said the committee does not have a choice, but to approve passage of this bill, because it is a federal requirement. He distributed information from the federal government regarding an audit on Montana's Motor

Vehicle Program. **EXHIBIT 6.** The letter states that Montana law is inefficient and does not meet federal guidelines. If Montana does not comply with this federal law by April 1992, they will lose 5% of the federal highway funds, and 10% in each succeeding year of the total federal highway funds.

Proponents' Testimony:

Peter Funk, Attorney General's Office, distributed information. **EXHIBIT 7 and 8.** Exhibit 7 shows the penalty of non-compliance of federal law in the withholding of federal highway funds. Exhibit 8 is a set of amendments to the bill as drafted. The department had problems with the bill because it was drafted in Missoula instead of Helena. The amendments do not change much, some time periods, etc.

Curt Laingen, Montana Motor Carrier's Association, said he strongly supports HB 572.

Roger Tippy, Wine and Beer Wholesale Association, said the bill needs to be supported for the federal reasons. Severe and restrictive measures are in the federal penalty. **EXHIBIT 9** Mr. Tippy requested a clarifying amendment. On page 5, line 16, states that the commercial vehicle operator while operating a motor vehicle, this is not stated in subsection 2. He wants to add after "body" and insert "while operating commercial motor vehicle".

Opponents' Testimony: None

Questions From Committee Members: None

Closing by Sponsor:

REP. RICE said he did not have an objection to the amendment offered by Mr. Tippy. He urged the committee to support HB 572.

HEARING ON HB 573

Presentation and Opening Statement by Sponsor:

REP. JIM RICE, House District 43, East Helena, said he is going to let Peter Funk explain the bill and what it does.

Proponents' Testimony:

Peter Funk, Attorney General's Office, said this bill was before the committee last session, but it did not pass. There is a definition of conviction in the Motor Vehicle Code, that is completely unique in defining the phrase. The language in the bill that needs to be deleted is the term "conviction shall mean a final conviction". He said there is so much legal time is spent wrangling over what the meaning is of "final conviction". In one instance, it can mean when the Supreme Court is through

with a case, i.e., when someone receives a speeding ticket, it cannot be counted for points until it has been appealed to the Supreme Court, which is the final resolution of the case. What is willing to be conceded before the defense bar, is when someone in this state receives a deferred sentence, it is impossible for the attorneys to argue that the person has been "convicted". Most people that kill someone in a motor vehicle are charged with negligent vehicular homicide. Most people in this situation are first time offenders before the capital justice system. Because of this, when someone pleads guilty, there is a deferred imposition of sentence. This leaves the department to keep track of all minor traffic offenders, and when someone is guilty of negligent vehicular homicide and receives a deferred sentence, it cannot be counted unless it goes to the Supreme Court. He gave an instance of a woman from California who had an immediate family member killed in Montana in Lake County by a drunk driver. With the current language, the drunk driver does not have any record in the agency. There is no notation in this person's driving record that states that this happened because of the phrase "final conviction". This bill will change that to be able to count those offenses when someone receives a deferred imposition sentence. When a person has fulfilled a time period and has demonstrated that their record is clean, there should be a record of that. The insurance agencies should know who kills victims with cars, and victims should have access to that information.

Opponents' Testimony: None

Questions From Committee Members:

REP. TUNBY asked why this bill failed last session. Mr. Funk said it was his opinion that it was a realization of the Judiciary Committee that his department would count the deferred imposition of sentence, and evidently didn't think that was something that should be done.

REP. STEPPLER asked if once this term is defined in this section, can it be used in reference to all other laws. Mr. Funk said the introductory language that is included in the existing statute defines the meaning of this definition of conviction for the Motor Vehicle Code. He said if this goes outside of the Motor Vehicle Code, Title 61, he didn't think there was any rational way which someone could argue for purposes of title 60 that they should operate under this definition because of that introductory language. REP. STEPPLER asked if this bill passes in this committee this session, will the department come back next session and want it allowed for other sections of the code. Mr. Funk said he isn't aware of other convictions which prohibits the counting of deferred imposition of sentence. The criminal justice information network that exist within the state, operate off of title 45, definition of conviction which they are asking to be inserted in this bill. He has never seen another definition of conviction in the code that includes this "final

conviction" language. If this committee asked to change this language and make it consistent with title 45, and there is another definition in the code, that says "final conviction", it would allow someone to come in and point to this committee's action, and say they want their language changed to. If the language is going to be defined for conviction for purposes of record keeping, it should be defined consistently throughout the code.

Closing by Sponsor:

REP. RICE said there is a big difference of what happened in the session in 1989 and the status of this bill now. After this bill was killed last session in the House Judiciary Committee and the House Floor did pass a subsequent bill in regards to deferred imposition of sentence in the criminal code, which allows information about convictions to be received and collected by the department. The information can now be collected on all other deferred sentences on all other crimes except the traffic code.

EXECUTIVE ACTION ON HB 573

Motion: REP. CLARK MOVED HB 573 DO PASS.

Motion/Vote: REP. FOSTER called the question. Voice vote was taken.

Vote: HB 573 DO PASS. Motion CARRIED unanimously. REP. CLARK moved HB 573 be placed on the consent calendar. Voice vote was taken. Motion FAILED 15 to 2 with REP. NELSON and REP. STEPPLER voting no.

EXECUTIVE ACTION ON HB 572

Motion: REP. FELAND MOVED HB 572 DO PASS.

Discussion: REP. FELAND moved to adopt amendment #1. EXHIBIT 8

REP. FOSTER called the question. Voice vote was taken. Motion CARRIED unanimously.

REP. STEPPLER moved to adopt amendment #2 requested by Roger Tippy. REP. STEPPLER called the question. Voice vote was taken. Motion CARRIED unanimously.

Motion/Vote: REP. NELSON MADE A SUBSTITUTE MOTION THAT HB 572 DO PASS AS AMENDED. Question was called. Voice vote was taken.

Vote: HB 572 DO PASS AS AMENDED. Motion CARRIED unanimously.

EXECUTIVE ACTION ON HB 867

Motion: REP. TOOLE MOVED HB 867 DO PASS.

Discussion: REP. LARSON moved to adopt amendment. EXHIBIT 5
REP. FELAND said he is against the bill. It will allow the PSC
onto private property. The GVW is out there now, this is not
needed.

REP. LARSON asked if Ms. Lane could explain any substantive
changes the amendment makes. Ms. Lane said the amendments put
back the language that was deleted in section 1, of the original
bill. It puts back existing language on lines 23 and 24. The
next change is on page 3, where it defines regular route to
include private roads going in between public roads. It takes
out the rest of the amendments in the bill. On page 8, line 25,
the word "public" is placed back into the bill, and "or
connecting private roads or ways" is added in, which means that
the PSC would have authority over regulated carriers on the
private roads as well as public roads.

REP. MCCULLOCH called the question to adopt amendment. Voice
vote was taken. Motion CARRIED unanimously.

REP. FOSTER asked if Wayne Budt, PSC, could address REP. FELAND'S
concerns. Mr. Budt said that private land is in the bill now,
and didn't think this would be an issue to exception. This is
done now, it just gives the PSC the authority to enforce what
they are doing now. He views this authority to be used only when
there is a complaint, and will not be patrolling the private land
trying to find violations.

Motion/Vote: REP. MCCULLOCH MADE A SUBSTITUTE MOTION THAT HB 867
DO PASS AS AMENDED. Question was called. Roll call vote was
taken. EXHIBIT 10

Vote: HB 867 DO PASS AS AMENDED. Motion CARRIED 9 to 8.

EXECUTIVE ACTION ON HB 571

Motion: REP. CLARK MOVED HB 571 DO PASS.

Motion/Vote: REP. KNOX called the question. Voice vote was
taken.

Vote: HB 571 DO PASS. Motion CARRIED to 3 with REP.
DEBRUYCKER, REP. NELSON and REP. FELAND voting no.

EXECUTIVE ACTION ON HB 570

Motion: REP. TOOLE MOVED HB 570 DO PASS.

Discussion: REP. TOOLE said he was concerned about obtaining two
signatures for two types of coverage. He didn't think it would
reduce the coverage and felt this was a clean up bill.

Vote: HB 570 DO PASS. Motion CARRIED 9 to 8. EXHIBIT 11

EXECUTIVE ACTION ON HB 37

Motion: REP. LARSON MOVED TO RECONSIDER ACTION ON HB 37 AND TAKE FROM THE TABLE.

Discussion: REP. LARSON spoke to his motion. Some of his constituents asked him if the committee could reconsider their actions because of the narrow margin of vote to table was 8 to 7.

Motion/Vote: Question was called. Roll call vote was taken to reconsider action on HB 37. EXHIBIT 12 Motion CARRIED to 2 with REP. STEPLER and CHAIRMAN STANG voting no.

Motion/Vote: REP. FOSTER MADE A SUBSTITUTE MOTION THAT HB 37 DO PASS.

REP. FOSTER spoke to his motion. He said the seed potato haulers have an interesting situation and he supports their dilemma.

REP. FELAND asked if the time period for these perishable commodities could be shortened. The previous testimony said the potato haulers were being picked up 2 months after their season was over with. CHAIRMAN STANG said that is his argument against the bill. He didn't think the potatoes are a perishable product. The trucks are still tearing up the roads, and the committee needs to decide if they want to protect the roads. There is no definition of perishable seed product and none in the statutes. He said it can be argued that logs are a perishable product.

REP. MCCULLOCH asked if the controversy isn't in the weight difference. CHAIRMAN STANG said the normal weight is 80,000 lbs. In the spring of the year when the roads are breaking up, the Highway Department may restrict loads. It can be done on so many pounds per square inch on the tires, or drop the weight to 75,000 or 60,000 lbs. CHAIRMAN STANG said that most of the people involved in this are from out-of-state. It is not making any more jobs available for the people in Montana.

REP. KNOX said the potatoes are very perishable, if they freeze they are worthless. CHAIRMAN STANG asked then why are they hauling in January. REP. KNOX said they are taking a great risk if they do.

REP. ELLIS said the seed potatoes are hauled when they need to be planted. Oregon and Idaho may need to plant earlier, Montana plants later.

CHAIRMAN STANG offered an amendment to HB 37. It would give the GVW Division rule-making authority to route the trucks on the roads that are acceptable, and those trucks be issued a special permit similar to the permit that is issued the triple trailers, if they are caught in violation of that permit they lose the permit to haul that excess weight.

HOUSE HIGHWAYS & TRANSPORTATION COMMITTEE

February 19, 1991

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REP. LARSON moved to adopt the amendment in concept. REP. NELSON called the question. Voice vote was taken. Motion CARRIED 16 to 1 with REP. BERGSAGEL voting no.

REP. CLARK offered an amendment to the amendment to specify the perishable product hauled is perishable seed potatoes only. REP. ELLIS called the question. Voice vote was taken. Motion CARRIED unanimously.

Motion/Vote: REP. LARSON MADE A SUBSTITUTE MOTION THAT HB 37 DO PASS AS AMENDED. Motion CARRIED by voice vote to 3 with REP. MCCULLOCH, REP. STEPPLER and CHAIRMAN STANG voting no.

EXECUTIVE ACTION ON HB 475

Motion: REP. ELLIS MOVED TO RECONSIDER ACTION ON HB 475, AS AMENDED, AND TAKE FROM THE TABLE. (See February 14, 1991 minutes.)

Discussion: REP. ELLIS distributed a letter from OPI that was sent to the PSC on June 16, 1989. EXHIBIT 13 He spoke to his motion. The same day the committee denied the PSC consideration of economic values as a basis for determining as to whom might be considered under PSC regulations, the garbage haulers were eliminated.

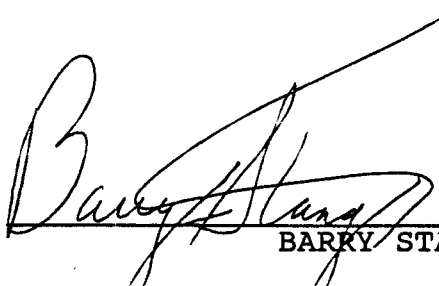
Motion/Vote: REP. LARSON called the question. Roll call vote was taken. EXHIBIT 14 Motion CARRIED 9 to 8.

Motion/Vote: REP. ELLIS MADE A SUBSTITUTE MOTION THAT HB 475 DO PASS AS AMENDED. REP. LARSON called the question. Roll call vote was taken. EXHIBIT 15

Vote: HB 475 DO PASS. Motion CARRIED 10 to 7.

ADJOURNMENT

Adjournment: 5:45 p.m.


BARRY STANG, Chair


CLAUDIA JOHNSON, Secretary

BS/cj

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HOUSE OF REPRESENTATIVES

HIGHWAYS AND TRANSPORTATION COMMITTEE

ROLL CALL

DATE 2-19-91

NAME	PRESENT	ABSENT	EXCUSED
REP. FLOYD "BOB" GERVAIS, V.-CHAIR	✓		
REP. ERNEST BERGSAGEL	✓		
REP. ROBERT CLARK	✓		
REP. JANE DEBRUYCKER	✓		
REP. ALVIN ELLIS, JR.	✓		
REP. GARY FELAND	✓		
REP. MIKE FOSTER	✓		
REP. PATRICK GALVIN	✓		
REP. DICK KNOX	✓		
REP. DON LARSON	✓		
REP. SCOTT MCCULLOCH	✓		
REP. JIM MADISON	✓		
REP. LINDA NELSON	✓		
REP. DON STEPPLER	✓		
REP. HOWARD TOOLE	✓		
REP. ROLPH TUNBY	✓		
REP. BARRY "SPOOK" STANG, CHAIRMAN	✓		

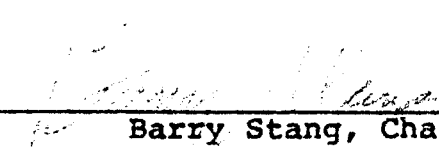
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HOUSE STANDING COMMITTEE REPORT

February 20, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Highways and Transportation
report that House Bill 557 (first reading copy -- white) do
pass .

Signed: 
Barry Stang, Chairman

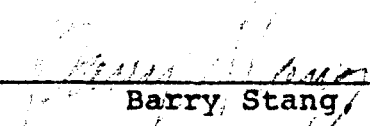
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HOUSE STANDING COMMITTEE REPORT

February 20, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Highways and Transportation report that House Bill 573 (first reading copy -- white) do pass and be placed on consent calendar .

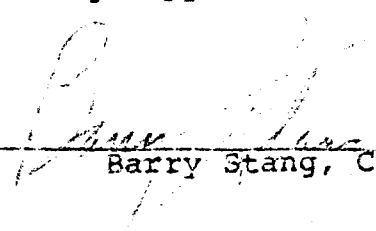
Signed: 
Barry Stang, Chairman

HOUSE STANDING COMMITTEE REPORT

February 20, 1991

Page 1 of 2

Mr. Speaker: We, the committee on Highways and Transportation report that House Bill 572 (first reading copy -- white) do pass as amended .

Signed: 
Barry Stang, Chairman

And, that such amendments read:

1. Title, line 11.

Strike: "§"

2. Title, line 12.

Strike: "§"

3. Title, line 20.

Strike: "§"

4. Page 4, line 14.

Strike: "section"

Insert: "title"

5. Page 5, line 16.

Following: "body"

Insert: "while operating a commercial motor vehicle"

6. Page 8, line 19.

Following: "for"

Strike: "10 years"

Insert: "life"

7. Page 9, line 10.

Strike: "61-8-803"

Insert: "[section 7]"

8. Page 9, line 17.

Strike: "61-8-804"

Insert: "[section 7]"

February 20, 1991

Page 2 of 2

9. Page 9, line 20.

Strike: "The"

Insert: "Upon receiving notice pursuant to 61-5-208, [section 5], or [section 6], the"

10. Page 9, lines 21 through 24.

Following: "endorsement" on line 21

Strike: remainder of line 21 through "61-8-806" on line 24

Insert: ", as follows:

(1) upon notice of a first conviction, for 1 year, with no provision for a probationary license, except that if the offense occurred while operating a commercial motor vehicle transporting hazardous material, the suspension must be for 3 years;

(2) upon notice of a second conviction, as determined from the records of the department, for life, with no provision for a restricted license or endorsement unless allowed by federal rules governing commercial drivers; and

(3) upon notice of a third conviction, an operator's commercial vehicle endorsement must be suspended for life and the operator is ineligible for reinstatement"

HOUSE STANDING COMMITTEE REPORT

February 20, 1991

Page 1 of 2

Mr. Speaker: We, the committee on Highways and Transportation report that House Bill 867 (first reading copy -- white) do pass as amended.

Signed: Barry Stang, Chairman

And, that such amendments read:

1. Title, line 4.

Strike: "GRANT THE"

Insert: "EXTEND"

2. Title, line 5.

Following: "OVER"

Insert: "REGULATED MOTOR CARRIERS WHILE TRAVELING ON"

3. Title, lines 7 and 8.

Following: "69-12-101" on line 7

Strike: remainder of line 7 through "69-12-421," on line 8

4. Page 2, lines 6 and 7.

Strike: lines 6 and 7 in their entirety

Renumber: subsequent subsections

5. Page 2, line 20.

Following: "~~public~~"

Insert: "public"

6. Page 2.

Following: line 24

Insert: "(9) "Public highway" means a public street, road, highway, or way in this state."

7. Page 3.

Following: line 1

Insert: "(11) "Regular route" includes all segments of roads or ways between termini, including public highways and any private roads or ways."

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2-20-91
JDB

February 20, 1991
Page 2 of 2

8. Page 3, line 2 through page 8, line 20.
Strike: sections 2 through 7 in their entirety
Renumber: subsequent section

9. Page 8, line 25.
Following: "publie"
Insert: "public"
Following: "highways"
Insert: "or connecting private roads or ways"

C. J.
Johnson

HOUSE STANDING COMMITTEE REPORT

February 25, 1991

Page 1 of 1

Mr. Speaker: we, the committee on Highways and Transportation
report that House Bill 571 (first reading copy -- white) do
pass .

Signed: /S/
Barry Stang, Chairman

10147
2-20-91
JDB

HOUSE STANDING COMMITTEE REPORT

February 20, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Highways and Transportation
report that House Bill 570 (first reading copy -- white) do
pass .

Signed: Barry Stang
Barry Stang, Chairman

10:40
2-20-91
TDB

HOUSE STANDING COMMITTEE REPORT

February 20, 1991

Page 1 of 3

Mr. Speaker: We, the committee on Highways and Transportation report that House Bill 37 (first reading copy -- white) do pass as amended.

Signed: Barry Stang, Chairman

And, that such amendments read:

1. Title, line 7.
Following: "PERISHABLE"
Strike: "AGRICULTURAL SEEDS"
Insert: "SEED POTATOES"

2. Title, line 8.
Following: " ; "
Insert: "TO REQUIRE THAT A PERMIT BE OBTAINED; AMENDING SECTION 61-10-128, MCA;"

3. Page 1, line 11.
Insert: "

STATEMENT OF INTENT

It is the intent of the legislature to allow the department of highways to require vehicles transporting perishable seed potatoes on restricted roads to be routed to the nearest road that is not restricted, even if the routing is not the shortest route to the destination."

4. Page 1, line 13.
Following: line 12

Insert: "Section 1. Section 61-10-128, MCA, is amended to read:
"61-10-128. (Temporary) When authorities may restrict right to use roadway. (1) Neither the department nor a local authority may alter the limitations provided in 61-10-101 through 61-10-110 or substitute other limitations or requirements, except as provided in this section.

(2) The department of highways by order, or a local road authority by ordinance or resolution, may prohibit the operation of or impose restrictions on the weight and speed of a vehicle traveling on a public highway under its respective jurisdiction and for which it is responsible for maintenance whenever the

10140
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TOD

February 20, 1991
Page 2 of 3

highway will be seriously damaged or destroyed by deterioration, rain, snow, or other climatic conditions, unless the use of vehicles on the highway is prohibited or the permissible vehicle weights and speed are reduced. The department of highways or the authority which enacts the ordinance or resolution shall erect signs designating the department's order or the authority's ordinance or resolution at each end of that portion of the highway affected, and the order or ordinance or resolution is not effective until the signs are erected. The department, or the authority by ordinance or resolution, may prohibit the operation of trucks or other commercial vehicles, or impose limitations on their weight on designated highways, subject to the provisions of subsection (3). These prohibitions and limitations shall be designated by appropriate signs placed on the highways.

(3) Neither the department nor a local authority may prohibit the operation of or impose a restriction on the weight of a vehicle loaded with perishable ~~agricultural seeds~~ seed potatoes that is traveling on a public highway if:

(a) the vehicle is being operated within its legal licensed gross vehicle weight; and

(b) a permit has been issued under 61-10-107(3), regardless of the vehicle's gross weight, specifying the route from point of loading to the nearest nonrestricted road; and

~~(b)~~ (c) the driver has in his possession a federal-state inspection certificate issued for the load.

(4) A permit issued under subsection (3) may be revoked for violating any condition of the permit.

61-10-128. (Effective July 1, 1991) When authorities may restrict right to use roadway. (1) A local authority may not alter the limitations provided in 61-10-101 through 61-10-110 or substitute other limitations or requirements, except as provided in this section.

(2) The department of highways by order, or a local road authority by ordinance or resolution, may prohibit the operation of or impose restrictions on the weight and speed of a vehicle traveling on a public highway under its respective jurisdiction and for which it is responsible for maintenance whenever the highway will be seriously damaged or destroyed by deterioration, rain, snow, or other climatic conditions, unless the use of vehicles on the highway is prohibited or the permissible vehicle weights and speed are reduced. The department of highways or the authority which enacts the ordinance or resolution shall erect signs designating the department's order or the authority's ordinance or resolution at each end of that portion of the highway affected, and the order or ordinance or resolution is not effective until the signs are erected. The department, or the authority by ordinance or resolution, may prohibit the operation of trucks or other commercial vehicles, or impose limitations on their weight on designated highways. These prohibitions and

10:40
2-20-91
TDB

February 20, 1991
Page 3 of 3

limitations shall be designated by appropriate signs placed on the highways."

Renumber: subsequent sections

Draft Copy

Printed 6:05 pm on February 18, 1991

EXHIBIT 1
DATE 2-19-91
HB 680

LC000?

JOINT RESOLUTION NO. ***

Introduced By *****

By Request of The House Highways and Transportation Committee

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING LOCAL CITIZENS LIVING ALONG MAJOR HIGHWAYS, SUCH AS MONTANA HIGHWAY 35 BETWEEN POLSON AND COLUMBIA FALLS, TO WORK COOPERATIVELY WITH USERS TO DEVELOP LOCAL AND REGIONAL SAFETY COOPERATIVE PROGRAMS TO BETTER ENABLE THE FULL USE OF THE HIGHWAYS FOR SAFE TRANSPORTATION BY BOTH THE LOCAL USERS AND STATEWIDE USERS.

WHEREAS, the Montana Legislature and the federal government have established a network of state and federal-aid highways throughout the state to provide a transportation system for all citizens to use and enjoy; and

WHEREAS, an adequately funded highway program is intended to serve the needs for transporting agricultural commodities from farm to market and needed commodities for commerce, citizen consumption, and the betterment of communities in the state; and

WHEREAS, certain highways in the state, such as Montana Highway 35 between Polson and Columbia Falls, appear to follow routes that are environmentally sensitive and potentially hazardous, especially during winter driving conditions, due to their respective configurations, curves, and narrow lanes that may contribute to unsafe passing on much of the route; and

Draft Copy

Printed 6:05 pm on February 18, 1991

WHEREAS, any contemplation of action by the Legislature to restrict the use of any Montana highway by excluding commercial vehicles based solely on the speculation that the routes are unsafe or environmentally sensitive does not appear to be in the best interest of all citizens in the state; and

WHEREAS, local and regional efforts by citizens and all users in some areas, particularly along Montana Highway 35, have resulted in positive accomplishments for improving safety and enhancing safe operations by both commercial vehicle users and local citizen users and residents; and

WHEREAS, local school officials and school bus drivers, commercial users, and local citizens along the route, being particularly concerned about the safety and welfare of school students being transported by bus to and from school, have agreed to implement a special communication effort using channel 19 on their CB radios in their respective vehicles to communicate their presence on the route, resulting in stopping and slowing down when necessary, and have, as a result, appreciably reduced the chances for accidents; and

WHEREAS, better enforcement of speed limit laws by enforcement officials, speed law compliance by commercial truckers, and the development of pullout areas for safe passing along these routes will result in greater enhancement of safety for all users of these particular highways.

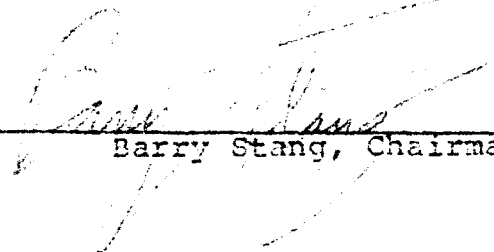
NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

HOUSE STANDING COMMITTEE REPORT

February 20, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Highways and Transportation report that House Bill 475 (first reading copy -- white) do pass as amended .

Signed: 
Barry Stang, Chairman

And, that such amendments read:

1. Title, lines 6 and 7.

Following: "THE" on line 6

Strike: remainder of line 6 through "AGRICULTURE" on line 7

Insert: "OFFICE OF PUBLIC INSTRUCTION"

2. Title, line 7.

Following: "OF"

Insert: "UNITED STATES DEPARTMENT OF AGRICULTURE"

3. Page 2, line 6.

Following: "(c)"

Insert: "United States department of agriculture"

4. Page 2, line 7.

Strike: "United States department of agriculture"

Insert: "office of public instruction"

Draft Copy

Printed 6:05 pm on February 18, 1991

EXHIBIT 1
DATE 2-19-91
HB 680

That the state, through the Department of Highways and the Montana Highway Patrol, and local governments and citizens living on the east lakeshore of Flathead Lake meet to discuss and develop safety enhancement programs that include effective communication, local and state enforcement of speed limits, and other safety requirements in the operation of all vehicles by all users, particularly commercial and other regular users, of these highways.

BE IT FURTHER RESOLVED, that the Department of Highways, the Montana Highway Patrol, and local governments be encouraged and urged to increase and expedite existing efforts and establish necessary additional cooperative programs and enforcement policies of regulations and laws to increase safety along these highways.

-END-

{Valencia Lane
Staff Attorney
Montana Legislative Council
(406) 444-3064}

EXHIBIT 2
DATE 2-19-91
HB 680

Montana Department of Highways
Helena, Montana 59620

Memorandum

To: The Honorable Barry Stang, Chairman
House Highways Committee

Members of the House Highways Committee

From: David A. Galt, Acting Administrator
Gross Vehicle Weight Division

Date: February 19, 1991

Subject: Highway 35

During the hearing on HB 680, you asked the Department of Highways what its position would be regarding the signing of Highway 35 to help reduce potential truck-school bus problems.

The department would be willing to work towards installing signs for Highway 35. We believe properly signing this route would take three large signs at an approximate cost of \$13,000. The department would like the responsibility for the message and would install the signs if the Wood Products and Motor Carriers' associations paid for the signs.

We would like to offer as an alternate suggestion that the associations pursue billboard advertisements. This suggestion would allow a few months trial period to study the effectiveness and probably be less expensive. In addition, it would give the private interests control over the message.

As you are aware, the department feels forcing truck traffic onto Highway 93 and into Kalispell and Polson will also result in a negative public reaction. We are willing to work with any group of people to resolve the Highway 35 issue, but we are also concerned about other negative reactions.

DAG:D:GVW:183.by

cc: Tom Barnard

EXHIBIT 3
DATE 2-19-91
HB 557

TESTIMONY ON H.B. 557

FEBRUARY 19, 1991

I AM RICH BROWN, ADMINISTRATOR OF MONTANA'S VETERANS AFFAIRS DIVISION.

FOR YEARS, COUNTIES ACROSS MONTANA HAVE ALLOWED 100% SERVICE-CONNECTED DISABLED VETERANS THE OPTION OF PAYING THEIR FEES PURSUANT TO TITLE 61-3-451 M.C.A. AND THEN IF THEY DECIDED ON A DIFFERENT LICENSE PLATE TO EITHER PAY THE ADDITIONAL COSTS (FOR EXAMPLE: PAY AN ADDITIONAL \$25.00 AND SECURE A PERSONALIZED LICENSE PLATE) OR THE OPTION OF ANOTHER LICENSE PLATE (P.O.W. OR HANDICAPPED LICENSE PLATE). THIS PROCEDURE HAS ALLOWED 100% SERVICE-CONNECTED DISABLED VETERANS WHO WISH A PERSONALIZED PLATE TO UTILIZE THE BENEFIT YOU HAVE GIVEN THEM UNDER TITLE 61-3-451 WITHOUT THE REQUIREMENT OF NOTING THEIR DISABILITY TO THE ENTIRE STATE. THE COUNTY PROCEDURE ALLOWED 100% SERVICE-CONNECTED DISABLED VETERANS THE RECOGNITION AS FORMER P.O.W.'S RATHER THAN DISABLED VETERANS AND ALLOWED THOSE PHYSICALLY IMPAIRED VETERANS THE ABILITY TO CHOOSE THE INTERNATIONALLY RECOGNIZED HANDICAPPED SYMBOL RATHER THAN THE D.V. PLATE. FOR THE PHYSICALLY IMPAIRED THIS MEANT IF THEY WERE ABLE TO TRAVEL TO ANOTHER STATE OR CANADA THEY DID NOT RISK A PARKING TICKET WITH THE INTERNATIONALLY RECOGNIZED HANDICAPPED PLATE WHICH IS NOT THE CASE WITH THE D.V. PLATE.

EXHIBIT 3
DATE 2-19-91
HB 557

ON NOVEMBER 15, 1990, THE ATTORNEY GENERALS' OFFICE ISSUED AN OPINION NOTING THAT 100% DISABLED VETERANS WISHING TO QUALIFY FOR THE TAX EXEMPTION YOU GRANTED HAD NO OPTIONS UNDER THE LAW AND MUST TAKE THE "D.V." LICENSE OR PAY FULL TAXES.

WE HAVE BEEN BOMBARDED BY COMPLAINS FROM THESE VETERANS WHO WERE SURPRISED WHEN THEY ENTERED THEIR COUNTY COURTHOUSE TO LEARN OF THIS NEW AND VERY STRICT OPINION. ONE BLINDED VIETNAM VETERAN, WHO IS ALSO A NATIVE AMERICAN AND HAS UTILIZED PERSONALIZED PLATES FOR A NUMBER OF YEARS, CALLED ME AND ASKED IF THE STATE WAS FORCING HIM TO BE RECOGNIZED THIS YEAR AS A DISABLED VETERAN, WOULD THE NEXT STEP REQUIRE HE PURCHASE PLATES THAT NOTED HE WAS ALSO AN INDIAN. P.O.W.'S AND MOBILITY IMPAIRED VETERANS HAVE ECHOED THIS VETERANS SENTIMENTS. ALL HAVE BEEN SURPRISED AND SHOCKED TO LEARN OF THE NEWS.

A REQUEST TO THE ATTORNEY GENERALS' OFFICE TO CHANGE OR HOLD OFF OF THIS OPINION HAS BEEN ANSWERED WITH A 'REGRETTABLE NO'.

WE HAVE THEREFORE BROUGHT THIS ISSUE TO YOU. IF H.B. 557 IS PASSED AND SIGNED INTO LAW, IT WILL ONLY RESTORE FOR MONTANA'S 100% DISABLED VETERANS THE OPTIONS COUNTIES HAVE GIVEN TO THEM FOR YEARS. IT WILL, IN MY PROFESSIONAL OPINION, IT WILL SIMPLY RESTORE YOUR ORIGINAL LEGISLATIVE INTENT.

ON BEHALF OF MONTANA'S APPROXIMATELY 600, 100% SERVICE-CONNECTED DISABLED VETERANS, I WISH TO THANK YOU AND REPRESENTATIVE REAM FOR YOUR TIME AND CONSIDERATION ON THIS ISSUE.

ATTORNEY GENERAL
STATE OF MONTANA

EXHIBIT 3
DATE 2-19-91
HB 557

Marc Racicot
Attorney General



Justice Building
Helena, Montana 59620

June 25, 1990

Rich Brown, Administrator
Veterans Affairs Division
Department of Military Affairs
P.O. Box 5715
Helena MT 59604

Dear Rich:

I have received and carefully reviewed your letter concerning special license plates for disabled veterans. I would also like to point out that I carefully reviewed the memorandum of Assistant Attorney General Peter Funk dated November 15, 1989, and directed to Dean Roberts, Administrator of the Motor Vehicle Division, concerning this subject prior to the time that it was rendered.

Our joint conclusion that regular county-numbered license plates could not be issued under the provisions of section 61-3-451, MCA, is based upon the clear, unambiguous requirement of the applicable statute. That section requires that "specially inscribed license plates ... bearing the letters and character 'DV' followed by three or four consecutive numbers" be issued to disabled veterans who choose to secure license plates pursuant to section 61-3-451, MCA.

There is simply no discretion provided to the Department of Justice to proceed in a manner different than that described in the aforementioned statute. Unquestionably I would not dispute your observations concerning this matter, but the law provides unequivocally clear directions that must be observed.

I regret that I cannot be of more assistance to you, but hope this explanation of the situation is helpful.

Sincerely,

A handwritten signature in cursive script that reads "Marc Racicot".

MARC RACICOT
Attorney General

cc: Dean Roberts, Administrator, Motor Vehicle Division

VETERANS AFFAIRS DIVISION
DEPARTMENT OF MILITARY AFFAIRS

EXHIBIT 3
DATE 2-19-91
HB 557



STAN STEPHENS, GOVERNOR

STATE OF MONTANA

P.O. Box 5715
Helena, Montana 59604

June 20, 1990

Honorable Marc Racicot
Montana State Attorney General
Justice Building
Helena, Montana 59620

Dear General Racicot,

Attached please find a copy of an opinion issued by your office which I believe has a very negative impact on many Montana 100% disabled veterans.

First of all, the opinion requires all 100% disabled veterans buy only a "D.V." license plate in order to obtain the tax reduction. For many poor veterans this leaves them no option except the "D.V." plate, forcing them to identify themselves as disabled. In my non-legal, professional opinion, this is clearly a violation of their Right to Privacy. Identifying yourself also as 100% disabled may, in fact, make you a target for crime or make you a target for ridicule.

Secondly, pursuant to the provisions of 61-3-406, 100% disabled veterans are the only Montana citizens not allowed their right to pay an additional fee for personalized license plates. Again, in my non-legal, professional opinion, this is discriminatory toward a single, small group of Montana's finest citizens.

The operational aspect of this opinion has also had a negative impact among Montana's 100% disabled veterans. First, they have received no notice of your opinion, so when they go to their local County to pick up their ordered and paid for personalized license plates, they are advised they must either pay the entire taxes on the vehicle or take D.V. plates.

Some disabled veterans have had these same personalized plates on their vehicle for a number of years and are not only surprised but very angry to learn of your "new" opinion on an "old" law.

EXHIBIT 3
DATE 2-19-91
HB 557

No provisions have been made for refunds of the money paid by 100% disabled veterans for their personalized plates.

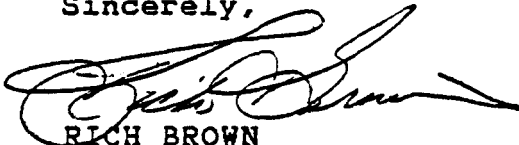
The Counties lose income from the sale of personalized and centennial license plates.

If this is the State of Montana's first attempt to regulate the sale of license plates for the smallest group of license plate holders, it has not been received well. Some 100% disabled veterans are still receiving personalized plates and others are not. Most, if not all, will not be happy with this new opinion.

For the above captioned reasons, I would appreciate you withdrawing your opinion until we can have this matter resolved by the Montana State Legislature. As one who helped author and work with this law over the years, I again must express my opinion that your opinion goes beyond the intent of the law.

I certainly hope we can at least resolve this situation toward a better operational plan for Montana veterans.

Sincerely,



RICH BROWN
Administrator

cc: Montana Board of Veterans Affairs
Ken Hannah, Adjutant, Disabled American Veterans
Major General Gary Blair

ATTORNEY GENERAL
STATE OF MONTANA

EXHIBIT 3
DATE 2-19-91
HB 557

Marc Racicot
Attorney General

Justice Building
Helena, Montana 59620

MEMORANDUM

TO: DEAN ROBERTS, Administrator
Motor Vehicle Division

FROM: PETER FUNK
Assistant Attorney General

DATE: November 15, 1989

RE: Special License Plates--Disabled Veterans

Dean, you have asked me for an opinion on the meaning of section 61-3-451, MCA. I understand that for some period of time the Department has interpreted this statutory provision as allowing for the issuance of either a regular county-numbered vehicle license plate or the special "DV" license plate to an individual who is a veteran with a 100 percent service-connected disability. The specific question asked is whether the issuance of a regular county-numbered vehicle license plate is appropriate under this provision. The short answer is no.

The statute in question provides:

Special license plates -- disabled veterans. (1) Any person who is a veteran of the armed services of the United States and 100% disabled because of an injury which has been determined by the veterans administration to be service connected and who is a resident of the state of Montana and who is the owner of a passenger automobile or of a truck up to and including three-quarter ton GVW rated capacity shall be provided with specially inscribed license plates upon payment of a fee of \$5 for such automobile or truck and upon proof of 100% service-connected disability.

(2) The department of justice shall assign to each veteran qualified under subsection (1) who applies according to the rules of the department a registration designation bearing the letters and character "DV-" followed by three or four consecutive numbers, and the department shall issue to the disabled veteran two

Dean Roberts
Page 2
November 15, 1989

EXHIBIT 3
DATE 2-19-91
HB 557

special license plates bearing the inscription assigned to him.

(3) The special license plates may be reregistered or renewed upon payment of the fees required in subsection (1) and compliance with the rules of the department.

§ 61-3-451, MCA.

It is clear to me that only the special "DV" license plate should be issued when a qualified individual wishes to take advantage of the terms of the statute. Subsection (1) includes language stating that an applicant "shall be provided with specially inscribed license plates ..." Subsection (2) provides that "the department shall issue to the disabled veteran two special license plates bearing the inscription assigned to him." The special inscription required on these is also detailed in subsection (2) of the statute.

Two other points concerning these special "DV" license plates need to be mentioned. First, section 61-3-313, MCA, exempts the disabled veteran license plates from the staggered registration system. Therefore, under section 61-3-312, MCA, these special license plates are issued for the period January 1 - December 31. Second, section 61-3-452, MCA, prohibits any transfer of a set of these license plates to any individual other than the original applicant. The original applicant may transfer the disabled veteran plates to another vehicle under section 61-3-335, MCA.

Do not hesitate to get in touch if you have any remaining questions.

cc: Daryll "Bud" Schoen

EXHIBIT 3DATE 2-19-91HB 557

owner and a resident of this state license plates, to be numbered in sets of two with a different number following appropriate letters and symbol as follows: United States army reserve, AR (symbol); United States naval reserve, NR (anchor); United States air force reserve, AFR (symbol); and United States marine corps reserve, MCR (globe and anchor). Plates must be furnished by the department to the county treasurer, who shall issue them to the members of the armed forces reserves. The commanding officer of each armed forces reserve unit shall issue to each eligible member of such reserve unit a certificate authorizing the county treasurer to issue one set of such plates, which the county treasurer shall issue upon presentation of the certificate by the eligible member. The member shall surrender the plates upon becoming ineligible to use them, and the commanding officer shall notify the county treasurer of cancellation of the ineligible person's certificate. Plates so issued must be placed or mounted on a vehicle owned by such member and must be removed upon sale or other disposition of the vehicle.

(2) Each member of the reserve armed forces of the United States who receives special license plates under subsection (1) is liable for payment of all taxes and fees required under parts 3 and 5 of this chapter.

History: En. Sec. 1, Ch. 494, L. 1985; amd. Sec. 13, Ch. 503, L. 1985.

61-3-448 through 61-3-450 reserved.

61-3-451. Special license plates — disabled veterans. (1) Any person who is a veteran of the armed services of the United States and 100% disabled because of an injury which has been determined by the veterans administration to be service connected and who is a resident of the state of Montana and who is the owner of a passenger automobile or of a truck up to and including three-quarter ton GVW-rated capacity shall be provided with specially inscribed license plates upon payment of a fee of \$5 for such automobile or truck and upon proof of 100% service-connected disability.

(2) The department of justice shall assign to each veteran qualified under subsection (1) who applies according to the rules of the department a registration designation bearing the letters and character "DV-" followed by three or four consecutive numbers, and the department shall issue to the disabled veteran two special license plates bearing the inscription assigned to him.

(3) The special license plates may be reregistered or renewed upon payment of the fees required in subsection (1) and compliance with the rules of the department.

History: En. Sec. 1, Ch. 215, L. 1971; amd. Sec. 1, Ch. 33, L. 1975; amd. Sec. 1, Ch. 67, L. 1977; R.C.M. 1947, 53-106.8; amd. Sec. 7, Ch. 614, L. 1981; amd. Sec. 5, Ch. 614, L. 1983; amd. Sec. 1, Ch. 159, L. 1985; Sec. 10-2-301, MCA 1983; redes. 61-3-451 by Code Commissioner, 1985.

Cross-References

Special license plates for National Guardsmen, 10-1-110.

61-3-452. Disabled veterans' plates nontransferable. The special license plates for disabled veterans issued pursuant to 61-3-451 are not transferable.

History: En. Sec. 2, Ch. 215, L. 1971; R.C.M. 1947, 53-106.9; amd. Sec. 2, Ch. 159, L. 1985; Sec. 10-2-302, MCA 1983; redes. 61-3-452 by Code Commissioner, 1985.

61-3-404

MOTOR VEHICLE DATE 2-19-91

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HB 557

bear a county designation or no longer bear the correct county designation. the department shall provide nonremovable stickers bearing the appropriate county designation, which must be affixed to the license plates in use in accordance with instructions by the department.

History: En. 53-149 by Sec. 2, Ch. 257, L. 1973; R.C.M. 1947, 53-149; amd. Sec. 1, Ch. 318, L. 1979; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 21, Ch. 516, L. 1985; amd. Sec. 8, Ch. 661, L. 1989.

Compiler's Comments

1989 Amendment: At beginning of (1) inserted exception clause; and made minor changes in phraseology.

Cross-References

Collegiate license plates, 61-3-483.

61-3-404. Personalized license plates restricted to registered owner. Personalized license plates shall be issued only to the registered owner of the vehicle upon which they are displayed.

History: En. 53-151 by Sec. 4, Ch. 257, L. 1973; R.C.M. 1947, 53-151.

Cross-References

Certificates of ownership, Title 61, ch. 3, part 2.

61-3-405. Application for personalized plates. An applicant for personalized license plates or renewal of such plates in subsequent years pursuant to 61-3-401 through 61-3-406 shall file an application therefor in the form and by the date the department requires, indicating thereon the combination of letters or numbers, or both, requested as a registration number. There shall be no duplication of registration numbers, and the department may refuse to issue any combination of letters or numbers, or both, that may carry connotations offensive to good taste and decency or which are misleading or a duplication of license plates provided for elsewhere in this title.

History: En. 53-152 by Sec. 5, Ch. 257, L. 1973; R.C.M. 1947, 53-152; amd. Sec. 36, Ch. 421, L. 1979; amd. Sec. 1, Ch. 503, L. 1985.

Cross-References

Personalized collegiate license plates, 61-3-466.

61-3-406. Fees for personalized plates — disposition. (1) In addition to all other fees and taxes imposed by law, the applicant for a personalized license plate shall pay a fee of \$25 for the original personalized license plate and a fee of \$10 for each transfer or renewal thereof.

(2) The revenue derived from the fee as provided herein must be deposited as follows:

(a) \$5 of the application fee and \$5 of the transfer or renewal fee in the county general fund; and

(b) \$20 of the application fee and \$5 of the transfer or renewal fee in the state general fund.

History: En. 53-153 by Sec. 6, Ch. 257, L. 1973; R.C.M. 1947, 53-153; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 1, Ch. 141, L. 1989; amd. Sec. 11, Ch. 398, L. 1989.

Compiler's Comments

1989 Amendments: Chapter 141 in (1) increased fees for original personalized license plate from \$20 to \$25 and for transfer or renewal from \$5 to \$10; in (2) designated \$5 of application fee and \$5 of transfer or renewal fee to the

county general fund and \$20 of application fee and \$5 of transfer or renewal fee to the state special revenue fund; and made minor changes in style and form. Amendment effective March 18, 1989.

EXHIBIT 4
DATE 2-19-91
HB 736

Montana Audubon Legislative Fund

Testimony on HB 736
House Highways
February 19, 1991

Mr. Chairman and Members of the Committee,

My name is Linda Lee and I'm here today representing the Montana Audubon Legislative Fund. The Audubon Fund is composed of nine Chapters of the National Audubon Society and represents 2,500 members throughout the state.

We support House Bill 736 because funding for recreational pathways is something every state should be considering if they already haven't. The availability of a safe lane or path on which to commute encourages people to bicycle more. It seems quite appropriate to us that money for such pathways come from the gasoline tax.

The U.S. has become a car dependent country. Montanans need to do their share of reducing that dependence. Legislation like H B 736 is one way we can begin. The cost of the program is minimal considering the benefits; from saving petroleum to enhancing our health.

I have had the opportunity to live in two communities with developed bike paths; Anchorage, Alaska and Seattle, Washington. There is no question about the large amount of use these bikeways get when they are available.

Audubon urges you to support this legislation with a "do-pass."

Thank you.

EXHIBIT 5
DATE 2-19-91
HB 867

Amendments to House Bill No. 867
First Reading Copy

Requested by Rep. Bob Gilbert
For the Committee on Highways

Prepared by Robert Person
February 16, 1991

1. Title, line 4.
Strike: "GRANT THE"
Insert: "EXTEND"
2. Title, line 5.
Following: "OVER"
Insert: "REGULATED MOTOR CARRIERS WHILE TRAVELING ON"
3. Title, lines 7 and 8.
Following: "69-12-101" on line 7
Strike: remainder of line 7 through "69-12-421," on line 8
4. Page 2, lines 6 and 7.
Strike: lines 6 and 7 in their entirety
Renumber: subsequent subsections
5. Page 2, line 20.
Following: "~~publie~~"
Insert: "public"
6. Page 2.
Following: line 24
Insert: "(9) "Public highway" means a public street, road, highway, or way in this state."
7. Page 3.
Following: line 1
Insert: "(11) "Regular route" includes all segments of roads or ways between termini, including public highways and any private roads or ways."
8. Page 3, line 2 through page 8, line 20.
Strike: sections 2 through 7 in their entirety
Renumber: subsequent section
9. Page 8, line 25.
Following: "~~publie~~"
Insert: "public"
Following: "highways"
Insert: "or connecting private roads or ways"

EXHIBIT

DATE 2-19-91

HB

Legislature

LC 0180/01

LC 0180/01

INTRODUCED BY

HOUSE BILL NO. 867
Billent ~~UNANIMOUS~~

A BILL FOR AN ACT ENTITLED: "AN ACT TO ~~GRANT THE~~ ^{EXTEND} PUBLIC
SERVICE COMMISSION REGULATORY AUTHORITY OVER ALL ROADS OF ^{REGULATED MOTOR CARRIERS}
THE STATE, BOTH PRIVATE AND PUBLIC; AND AMENDING SECTIONS ^{WHILE TRAVELING ON}
69-12-101, ~~69-12-107, 69-12-311, 69-12-312, 69-12-313,~~
~~69-12-401, 69-12-421,~~ AND 69-12-503, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 69-12-101, MCA, is amended to read:

"69-12-101. Definitions. Unless the context requires
otherwise, in this chapter the following definitions apply:

(1) "Between fixed termini" or "over a regular route"
means the termini or route between or over which a motor
carrier usually or ordinarily operates motor vehicles, even
though there may be periodical or irregular departures from
the termini or route.

(2) "Certificate" means the certificate of public
convenience and necessity issued under this chapter.

(3) "Compensation" means the charge imposed on motor
carriers for the use of the highways in this state by motor
carriers under 69-12-421.

(4) "Corporation" means a corporation, company,
association, or joint-stock association.

(5) "For hire" means for remuneration of any kind, paid
or promised, either directly or indirectly, or received or
obtained through leasing, brokering, or buy-and-sell
arrangements from which a remuneration is obtained or
derived for transportation service.

~~(6) "Highway" means a street, road, highway, or way in
this state.~~

(6) ~~(6) + (7)~~ "Motor carrier" means a person or corporation,
or its lessees, trustees, or receivers appointed by any
court, operating motor vehicles upon any public highway in
this state for the transportation of persons or property for
hire on a commercial basis, either as a common carrier or
under private contract, agreement, charter, or undertaking.
The term includes any motor carrier serving the public in
the business of transportation of ashes, trash, waste,
refuse, rubbish, garbage, and organic and inorganic matter.

(7) ~~(7) + (8)~~ "Motor vehicle" includes vehicles or machines
motor trucks, tractors, or other self-propelled vehicle
used for the transportation of property or persons over the
public ^{public} highways of the state.

(8) ~~(8) + (9)~~ "Person" means an individual, firm, or
partnership. (9) "Public highway" means a public
street, road, highway, or way in this state.
~~for "Public highway" means a public street, road,
highway, or way in this state.~~

(10) "Railroad" means the movement of cars on rail.

INTRODUCED BY

HB 867

(11) "Regular route" includes all segments of roads or ways between termini, including public highways and any private roads or ways.

1 regardless of the motive power used.

2 ~~Section 2. Section 69-12-107, MCA, is amended to read:~~

3 "69-12-107. Status of private carriers under motor
4 carrier laws. Nothing in this chapter shall be construed as
5 converting or attempting to convert a private carrier into a
6 common carrier. It is hereby declared that this chapter is
7 intended primarily as a regulation of the public highways of
8 the state."

9 Section 3. Section 69-12-311, MCA, is amended to read:

10 "69-12-311. Class A motor carrier certificate. (1) No
11 Class A motor carrier shall operate for the transportation
12 of persons and/or property for hire on any public highway in
13 this state without first having obtained from the
14 commission, under the provisions of this chapter, a
15 certificate declaring that public convenience and necessity
16 require such operation.

17 (2) A motor carrier making application for such
18 certificate shall do so in writing, separately for each
19 route, which petition shall be verified by the applicant and
20 shall specify the following matters:

21 (a) the name and address of the applicant and the names
22 and addresses of its officers, if any;

23 (b) the public highway or highways over which and the
24 fixed termini between which or the regular route or routes
25 ~~over which it intends to operate;~~

1 ~~(c) the kind of transportation, whether passenger,~~
2 freight, or both, together with a full and complete
3 description of the character of the vehicle or vehicles to
4 be used, including the seating capacity of any vehicle to be
5 used for passenger traffic and the tonnage capacity of any
6 vehicle to be used in freight traffic;

7 (d) the proposed time schedule;

8 (e) a schedule of the tariff or rates desired to be
9 charged for the transportation of freight and/or passengers;

10 (f) a complete and detailed description of the property
11 proposed to be devoted to the public service;

12 (g) a detailed statement showing the assets and
13 liabilities of such applicant; and

14 (h) such other or additional information as the
15 commission may by order require.

16 (3) Such application shall be accompanied by a filing
17 fee to be set by rule of the commission."

18 Section 4. Section 69-12-312, MCA, is amended to read:

19 "69-12-312. Class B motor carrier certificate. (1) No
20 Class B motor carrier shall operate for the transportation
21 of persons and/or property for hire on any public highway in
22 this state without first having obtained from the
23 commission, under the provisions of this chapter, a
24 certificate that public convenience and necessity require
25 ~~such operation.~~

~~(2) A motor carrier making application for such permit shall do so in writing, separately for each locality for which consideration is desired, which petition shall be verified and shall specify the following matters:~~

~~(a) name and address of the applicant and the names and addresses of its officers, if any;~~

~~(b) the kind of transportation, whether passenger, freight, or both, together with a full and complete description of the character of the vehicle or vehicles to be used, including the seating capacity of any vehicle to be used for passenger traffic and the tonnage capacity of any vehicle to be used in freight traffic;~~

~~(c) the locality and character of operations to be conducted;~~

~~(d) a schedule of the tariff of rates desired to be charged for the transportation of freight and/or passengers;~~

~~(e) a complete and detailed description of the property proposed to be devoted to the public service;~~

~~(f) a detailed statement showing the assets and liabilities of such applicant; and~~

~~(g) such other or additional information as the commission may by order require.~~

~~(3) Such application shall be accompanied by a filing fee to be set by rule of the commission."~~

~~Section 5. Section 69-12-313, MCA, is amended to read:~~

~~69-12-313. Class C motor carrier certificate. (1) No Class C motor carrier, except any Class C motor carrier operating pursuant to the terms and conditions of a contract as provided in 69-12-324, shall operate for the distribution, delivery, or collection of goods, wares, merchandise, or commodities or for the transportation of persons on any public highway in this state without first having obtained from the commission, under the provisions of this chapter, a certificate that public convenience and necessity require such operation.~~

~~(2) A motor carrier making application for such permit shall do so in writing, separately for each route or locality for which consideration is desired, which petition shall be verified by the applicant and shall specify the following matters:~~

~~(a) the name and address of the applicant and the names and addresses of its officers, if any;~~

~~(b) the public highways or highways over which and the fixed termini between which or the route or routes over which it intends to operate, if the same are fixed, or the particular city, town, station, or locality from and/or to which the applicant intends to operate;~~

~~(c) the kind of transportation and the character of the goods, wares, merchandise, or commodities to be distributed, delivered, or collected, together with a full and complete~~

1 ~~description of the character of the vehicle or vehicles,~~
 2 including the rated tonnage capacity of such vehicles, to be
 3 used in such service of distribution, delivery or
 4 collection; and

5 (d) such other or additional information as the
 6 commission may by order require.

7 (3) Such application shall be accompanied by a fee to
 8 be set by rule of the commission.

9 (4) The submission of a Class C motor carrier
 10 application must be accompanied by the names and addresses
 11 of any person, corporation, or other legal entity with whom
 12 the applicant has executed a contract for the distribution,
 13 delivery, or collection of wares, merchandise, or
 14 commodities or transporting persons. Such contracts must be
 15 in writing, executed by the parties and submitted to the
 16 commission for examination."

17 **Section 6.** Section 69-12-401, MCA, is amended to read:

18 "69-12-401. Compliance with state law. It shall be
 19 unlawful for any corporation or person, its or his officers,
 20 agents, employees, or servants, to operate any motor vehicle
 21 for the transportation of persons and/or property for hire
 22 on any public highway in this state except in accordance
 23 with the provisions of this chapter."

24 **Section 7.** Section 69-12-421, MCA, is amended to read:

25 ~~"69-12-421. Annual fee for motor carriers. (1) Every~~

1 ~~as provided in subsection (2), in addition to all of the~~
 2 licenses, fees, or taxes imposed upon motor vehicles in this
 3 state and in consideration of the use of the public highways
 4 of this state, every motor carrier shall, at the time of the
 5 issuance of a certificate and annually thereafter, on or
 6 between October 1 and the following January 31, pay to the
 7 public service commission of Montana a fee set by rule of
 8 the commission for every motor vehicle operated by the
 9 carrier over or upon the public highways of this state.

10 (2) (a) A motor carrier engaged in seasonal operations
 11 only, where its operations do not extend continuously over a
 12 period of not to exceed 6 months in any calendar year, shall
 13 only be required to pay compensation and fees in a sum equal
 14 to one-half of the compensation and fees herein provided.

15 (b) The compensation and fees herein imposed shall not
 16 apply to motor vehicles maintained and used by a motor
 17 carrier as standby or emergency equipment. The commission
 18 shall have the power and it is hereby made its duty to
 19 determine what motor vehicles shall be classed as standby or
 20 ~~emergency equipment.~~

21 **Section 8.** Section 69-12-503, MCA, is amended to read:

22 "69-12-503. Rates to be reasonable and
 23 nondiscriminatory. (1) All rates, fares, charges,
 24 classifications, or rules of service for the transportation
 25 of property and/or persons upon the public highways of this

or connecting
private roads or
ways

1 state must be fair, just, reasonable, and nondiscriminatory.
2 No motor carrier operating under established rates shall
3 make, give, or permit any undue preference or advantage to
4 any particular person, company, corporation, locality, or
5 description of traffic, nor shall such motor carrier subject
6 any particular person, company, corporation, locality, or
7 description of traffic to any prejudice or disadvantage in
8 any respect. Nothing herein provided shall prevent the
9 commission from authorizing different rates or schedules of
10 rates for service between the same places or between
11 different points of origin and/or destination within the
12 same places when such different rates are justified by the
13 differing character of service to be rendered by the carrier
14 to a shipper or consignee.

15 (2) The commission may, upon its own initiative or upon
16 the complaint of any interested party, investigate any rate,
17 fare, charge, classification, or rule of service contained
18 in the schedule of any motor carrier. If the commission
19 shall find, after such investigation, that any such rate,
20 fare, charge, classification, or rule of service is unfair,
21 unjust, unreasonable, or discriminatory, it shall disallow
22 the same and fix a rate, fare, charge, classification, or
23 rule of service which shall be fair, just, reasonable, and
24 nondiscriminatory and it shall order the affected motor
25 carrier or carriers to conform to such modified schedule.

1 Each motor carrier affected by any complaint or
2 investigation shall first be given notice of the same and an
3 opportunity to be heard before the commission."

-End-



U.S. Department
of Transportation
Federal Highway
Administration

DRAFT

EXHIBIT 6
DATE 2-19-91
HB 572

400 Seventh St., S.W.
Washington, D.C. 20590

JUL 27 1991

Refer to: HCS-20

Mr. Duane Tooley
Chief, Driver Services Bureau
Department of Justice
303 North Roberts
Helena, Montana 59620

Through: Mr. Louis N. MacDonald
Regional Administrator
Lakewood, Colorado

Mr. Roger K. Scott
Division Administrator
Helena, Montana

Dear Mr. Tooley:

Thank you for the fine cooperation extended by your staff to Ms. Robin Smith, Ms. LuAnne Hansen and Mr. Dave Miller of the Federal Highway Administration during the Commercial Driver's License (CDL) confirmation review meeting in Helena, Montana, on June 15.

Most aspects of your CDL program meet the minimum standards. However, we cannot confirm your CDL issuance until we receive your assurances as to the satisfactory resolution of the immediate issues discussed below and until we are notified by the administrator of the Commercial Driver's License Information System (CDLIS) that the link between Montana and the CDLIS is fully operational.

Our observations on the Montana CDL program fall into two categories: immediate issues that will delay your confirmation letter if left unresolved; and long-term issues that may affect our future review of State compliance with section 12009(a) of the Commercial Motor Vehicle Safety Act of 1986.

The immediate issues are:

- (1) Montana's definition of a commercial motor vehicle (CMV) in Section 23.3.502 does not specify that any trailer for a Class A representative vehicle must be greater than 10,000 pounds. While the procedures manual indicates that Class A vehicles must have a 10,000 pound or greater trailer, the manual also states that some drivers can be tested with a smaller trailer. We recognize the constraints States and drivers face in finding adequate "representative" test vehicles. If you do find it necessary to test custom harvesters and mobile home transporters with smaller trailers, their licenses must be restricted. The CDLIS Driver History Record provides a restriction code "0" which can be used to restrict this type of driver from operating tractor trailers. Also, if Montana keeps articulated buses in class A, a similar restriction must also be used for those drivers.
- (2) The definition for a CMV contained in Section 23.3.502 seems to indicate that only vehicles over 10,000 pounds need hazardous materials placards and would, therefore, be subject to the CDL provisions. The procedures manual correctly indicates that any size vehicle transporting placarded amounts of hazardous materials is subject to these provisions. The Montana rules should be revised for consistency.

- (3) The definition for "tank endorsement" in Section 23.3.502 is incorrect in that it does not include tank vehicles used to transport gaseous materials. The word "bulk" should also be removed from the definition.

Long-term Issues In the course of our CDL confirmation review, we have made no judgment as to whether the State would be in substantial compliance with all 21 requirements included in Section 12009(a) of the Act. Since the States do not need to be "in substantial compliance" with these 21 requirements until the end of our Fiscal Year 1992, our formal review and determination will be made at a later time. Incidental to our CDL confirmation review, however, the following compliance issues were noted and are described below for your early information.

- (4) Montana's law states that nonresident CDL holders may operate in Montana "subject to the age limits applicable to commercial vehicle operators in this State." Most nonresidents operating CMVs in Montana will be involved in interstate commerce and will have to be at least 21 years old because they are subject to the 49 C.F.R. Part 391 requirements. On the other hand, some States will license commercial vehicle operators as young as age 16 or 17 for "intrastate" operations outside of their home States. The FHWA currently regards as a State matter any State's policy on honoring, for purposes of intrastate commerce only, out of State CDLs held by persons not qualified to operate in interstate commerce. Since 49 C.F.R. Section 391.2 does grant age exemptions to certain classes of interstate drivers, such as custom harvesters, the State of Montana will need to clarify or amend the above wording to appropriately reflect these requirements.
- (5) Montana's implied consent clause (Section 61-8-806) is only applied to a driver when a law enforcement officer has reasonable grounds to believe the driver's blood alcohol concentration (BAC) was 0.04 percent or more. The Federal rules require that drivers be subject to testing when they may have any measurable or detectable alcohol.
- (6) Montana has adopted legislation implementing disqualifications for drivers convicted of 0.04 percent BAC offenses and refusing chemical tests. The State will also need to apply the disqualification provisions to drivers convicted of driving under the influence (DUI), leaving the scene of an accident, or using a CMV in the commission of a felony. Montana's law also needs to be amended to include lifetime, rather than 10-year, disqualifications for drivers convicted of any combination of two disqualifying offenses contained in Part 383.51(b). Most of these changes are reflected in the proposed State amendments scheduled for introduction in January 1991.
- (7) The Montana legislation imposes 24-hour out-of-service periods for drivers testing at or over .04 BAC. Under the Federal rules, however, drivers must be placed out of service for 24 hours for any measurable or detectable amount of alcohol. Although MHP 391 may incorporate this, we have not seen a copy of it. Montana will need to bring its program into compliance either through a legislative or administrative rule change.

- (8) There seems to be a conflict between the sections of law which require the CDL disqualifications and Section 61-5-208. That section of law states that licenses cannot be revoked for more than 1 year except when the convictions are for violations of specific statutes.
- (9) Section 23.3.521 states that "Emergency or administrative personnel not ordinarily assigned to duties involving the operation of commercial motor vehicles may operate commercial motor vehicles without an endorsement on an emergency basis. . . ." We need clarification of this administrative rule because it seems to cover drivers not granted waivers in the Commercial Driver's License Program: Waivers: Final Disposition published in the Federal Register on September 26, 1988.

With your written assurances relating to Items (1) through (3) above, we look forward to being able to issue you a CDL confirmation letter immediately upon receipt of the required notification from the CDLIS Administrator.

If you have any questions about this letter or about any other aspects of our review, please contact Ms. LuAnne Hansen or Mr. Ronald Finn of my staff at (202) 366-4009. In the meantime, thanks again to you and your staff for your enthusiasm, commitment and comprehensive effort to comply with the requirements of the CDL program.

Sincerely yours,



R. P. Landis
Associate Administrator
for Motor Carriers

cc: Barry Goleman, Manager, AAMVAnet Inc.
Russel Simmons, CDLIS Administrator

by any other State or has been disqualified from operating a commercial motor vehicle by any other State or the Secretary.

SEC. 12010. GRANT PROGRAM.

(a) **ESTABLISHMENT.**—The Secretary may make a grant to a State in a fiscal year if the State enters into an agreement with the Secretary to participate in such fiscal year in the commercial driver's license program established by this title and the information system required by this title and to comply with the requirements of section 12009.

(b) **MINIMUM AMOUNT OF GRANT.**—The Secretary shall determine the amount of grants in a fiscal year to be made under this section to a State eligible to receive such grants in the fiscal year; except that—

(1) such State shall not be granted less than \$100,000 under this section in the fiscal year; and

(2) to the extent that any States are granted more than \$100,000 per State in the fiscal year under this section, the Secretary shall ensure that such States are treated equitably.

(c) **LIMITATION ON USE OF FUNDS.**—A State receiving a grant under this section may only use the funds provided under such grant for issuing commercial driver's licenses and complying with the requirements of section 12009.

(d) **CONTRACT AUTHORITY.**—Notwithstanding any other provision of law, approval by the Secretary of a grant to a State under this section shall be deemed to be a contractual obligation of the United States for payment of the amount of the grant.

(e) **PERIOD OF AVAILABILITY.**—Funds made available to carry out this section shall remain available for obligation by the State for the fiscal year for which such funds are made available. Any of such funds not obligated before the last day of such period shall no longer be available to such State and shall be available to the Secretary for carrying out the purposes of this title. Funds made available pursuant to this section shall remain available until expended.

(f) **FUNDING.**—There shall be available to the Secretary to carry out this section \$5,000,000 from funds made available to carry out section 404 of the Surface Transportation Assistance Act of 1982 for each of fiscal years 1989, 1990, and 1991.

SEC. 12011. WITHHOLDING OF HIGHWAY FUNDS FOR STATE NONCOMPLIANCE.

(a) **FIRST YEAR.**—The Secretary shall withhold 5 percent of the amount required to be apportioned to any State under each of sections 104(b)(1), 104(b)(2), 104(b)(5), and 104(b)(6) of title 23, United States Code, on the first day of the fiscal year succeeding the first fiscal year beginning after September 30, 1992, throughout which the State does not substantially comply with any requirement of section 12009(a) of this Act.

(b) **AFTER THE FIRST YEAR.**—The Secretary shall withhold 10 percent of the amount required to be apportioned to any State under each of sections 104(b)(1), 104(b)(2), 104(b)(5), and 104(b)(6) of such title on the first day of each fiscal year after the second fiscal year beginning after September 30, 1992, throughout which the State does not substantially comply with any requirement of section 12009(a) of this Act.

(c) **PERIOD OF AVAILABILITY; EFFECT OF COMPLIANCE AND NONCOMPLIANCE.**—

(1) **FUNDS WITHHELD ON OR BEFORE SEPTEMBER 30, 1995.**—
(A) **PERIOD OF AVAILABILITY.**—Any funds withheld under this section from apportionment to any State on or before September 30, 1995, shall remain available for apportionment to such State as follows:

(i) If such funds would have been apportioned under section 104(b)(5)(B) of such title but for this section, such funds shall remain available until the end of the second fiscal year following the fiscal year for which such funds are authorized to be appropriated.

(ii) If such funds would have been apportioned under section 104(b)(1), 104(b)(2), or 104(b)(6) of such title but for this section, such funds shall remain available until the end of the third fiscal year following the fiscal year for which such funds are authorized to be appropriated.

(B) **FUNDS WITHHELD AFTER SEPTEMBER 30, 1995.**—No funds withheld under this subsection from apportionment to any State after September 30, 1995, shall be available for apportionment to such State.

(2) **APPORTIONMENT OF WITHHELD FUNDS AFTER COMPLIANCE.**—If, before the last day of the period for which funds withheld under this section from apportionment are to remain available for apportionment to a State under paragraph (1), the State substantially complies with all of the requirements of section 12009(a) of this Act for a period of 365 days, the Secretary shall on the day following the last day of such period apportion to such State the withheld funds remaining available for apportionment to such State.

(3) **PERIOD OF AVAILABILITY OF SUBSEQUENTLY APPORTIONED FUNDS.**—Any funds apportioned pursuant to paragraph (2) shall remain available for expenditure until the end of the third fiscal year succeeding the fiscal year in which such funds are apportioned. Sums not obligated at the end of such period shall lapse or, in the case of funds apportioned under section 104(b)(5) of such title, shall lapse and be made available by the Secretary for projects in accordance with section 118(b) of such title.

(4) **EFFECT OF NONCOMPLIANCE.**—If, at the end of the period for which funds withheld under this section from apportionment are available for apportionment to a State under paragraph (1), the State has not substantially complied with all of the requirements of section 12009(a) of this Act for a 365-day period, such funds shall lapse or, in the case of funds withheld from apportionment under section 104(b)(5) of such title, such funds shall lapse and be made available by the Secretary for projects in accordance with section 118(b) of such title.

SEC. 12012. PENALTIES.

(a) **NOTICE OF VIOLATION.**—Paragraph (1) of section 521(b) of title 49, United States Code, is amended by inserting "or section 12002, 12003, 12004, 12005(b), or 12008(d)(2) of the Commercial Motor Vehicle Safety Act of 1986" after "the Motor Carrier Safety Act of 1984" and by striking out "section" the second place it appears and inserting in lieu thereof "sections".

(b) **CIVIL PENALTIES.**—Paragraph (2) of such section is amended, by inserting "(A) IN GENERAL.—" before "Except as", by inserting "(other than subparagraph (B))" before "except for recordkeeping

EXHIBIT
DATE 2-19-91
HB 572

PROPOSED AMENDMENTS TO HOUSE BILL 572
INTRODUCED COPY

DUE TO DRAFTING ERRORS, AMEND THE BODY OF THE INTRODUCED VERSION OF HOUSE BILL 572 BY REPLACING AND ADDING THE FOLLOWING:

Page 4, Line 14

At the end of (5), strike the word SECTION, insert:
TITLE.

Page 8, Line 19

Strike 10 YEARS, insert:
LIFE

Page 9, Line 10, strike 61-8-803 and insert:
(SECTION 7)

Page 9, line 17 At the end of section 6, strike 61-8-804 and insert: (SECTION 7)

Page 9, Line 18, SECTION 7. AFTER THE TITLE, STRIKE ALL OTHER EXISTING LANGUAGE, AND INSERT:

(1) Upon receiving a conviction of 61-5-208(5), (SECTION 5), or (SECTION 6), the department shall suspend the commercial vehicle operator's endorsement:

(a) Upon first conviction for 1 year, with no provision for a probationary license, except that if the offense occurred in a commercial motor vehicle transporting hazardous materials, the suspension for a first offense must be 3 years,

(b) Upon a second or subsequent offense as determined from the records of the department, for life with no provision for a restricted license or endorsement unless allowed by Federal rules governing commercial driver's.

(2) The department shall suspend an operator's commercial vehicle operator's endorsement for life if the operator has been convicted of a second offense in a separate incident of any offense described in 61-5-208(5), or Title 61, Chapter 8, Part 8, and are eligible for a commercial endorsement after 10 years has elapsed, and the driver has met the requirements for reinstatement by the department.

(3) If an operator of a commercial motor vehicle commits or is convicted of a third offense under (1), the commercial endorsement shall be suspended for life, and shall be ineligible to apply for a reduction of the life suspension.

EXHIBIT 9
DATE 2-19-91
HB 572

HOUSE OF REPRESENTATIVES

WITNESS STATEMENT

PLEASE PRINT

NAME Roger Tippy BILL NO. HB572

ADDRESS Tippy & McCue, 1215 11th Ave., Helena DATE 2/19/91

WHOM DO YOU REPRESENT? Mt. Beer & Wine Wholesalers Assn.

SUPPORT X OPPOSE _____ AMEND X

COMMENTS: Most provisions of the bill apply to situations where a commercial vehicle operator is operating a commercial motor vehicle. However, sec. 3 (2) does not. Would a person who held a Type I commercial drivers license because he occasionally drove a 26,000-lb-plus beer truck be subject to this "no measured amount" of BAC standard even when he was driving a lighter vehicle; or his personal car? To forestall such an interpretation, we suggest an amendment as follows:

1. Page 5, line 16

Following: "body"

Insert: "while operating a commercial motor vehicle"

EXHIBIT 10
DATE 2-19-91
HB 867

HOUSE OF REPRESENTATIVES

HIGHWAYS AND TRANSPORTATION COMMITTEE

ROLL CALL VOTE

DATE 2-19-91 BILL NO. 867 NUMBER

MOTION: Rep McCulloch Made Substitute
Motion That HB 867 Do pass as Amended.
Motion Carried 9-8

NAME	AYE	NO
REP. FLOYD "BOB" GERVAIS, VICE-CHAIRMAN	✓	
REP. ERNEST BERGSAGEL		✓
REP. ROBERT CLARK		✓
REP. JANE DEBRUYCKER		✓
REP. ALVIN ELLIS, JR.	✓	
REP. GARY FELAND		✓
REP. MIKE FOSTER	✓	
REP. PATRICK GALVIN	✓	
REP. DICK KNOX		✓
REP. DON LARSON	✓	
REP. SCOTT MCCULLOCH	✓	
REP. JIM MADISON		✓
REP. LINDA NELSON		✓
REP. DON STEPPLER		✓
REP. HOWARD TOOLE	✓	
REP. ROLPH TUNBY	✓	
REP. BARRY "SPOOK" STANG, CHAIRMAN	✓	
TOTAL	9	8

EXHIBIT 11
DATE 2-19-91
HB 570

HOUSE OF REPRESENTATIVES
HIGHWAYS AND TRANSPORTATION COMMITTEE

ROLL CALL VOTE

DATE 2-21-91 BILL NO. 570 NUMBER _____

MOTION: Do PASS CARRIED 9-8

NAME	AYE	NO
REP. FLOYD "BOB" GERVAIS, VICE-CHAIRMAN	✓	
REP. ERNEST BERGSAGEL		✓
REP. ROBERT CLARK		✓
REP. JANE DEBRUYCKER	✓	
REP. ALVIN ELLIS, JR.		✓
REP. GARY FELAND	✓	
REP. MIKE FOSTER		✓
REP. PATRICK GALVIN	✓	
REP. DICK KNOX		✓
REP. DON LARSON		✓
REP. SCOTT MCCULLOCH	✓	
REP. JIM MADISON	✓	
REP. LINDA NELSON		✓
REP. DON STEPPLER	✓	
REP. HOWARD TOOLE	✓	
REP. ROLPH TUNBY		✓
REP. BARRY "SPOOK" STANG, CHAIRMAN	✓	
TOTAL	9	8

EXHIBIT 12
DATE 2-19-91
HB 37

HOUSE OF REPRESENTATIVES
HIGHWAYS AND TRANSPORTATION COMMITTEE

ROLL CALL VOTE

DATE 2-19-91 BILL NO. HB 37 NUMBER

MOTION: Rep. Larson Moved to reconsider
Action on HB 37 And take from the table.
Motion Carried 14-2

NAME	AYE	NO
REP. FLOYD "BOB" GERVAIS, VICE-CHAIRMAN	✓	
REP. ERNEST BERGSAGEL		
REP. ROBERT CLARK	✓	
REP. JANE DEBRUYCKER	✓	
REP. ALVIN ELLIS, JR.	✓	
REP. GARY FELAND	✓	
REP. MIKE FOSTER	✓	
REP. PATRICK GALVIN	✓	
REP. DICK KNOX	✓	
REP. DON LARSON	✓	
REP. SCOTT MCCULLOCH	✓	
REP. JIM MADISON	✓	
REP. LINDA NELSON	✓	
REP. DON STEPPLER		✓
REP. HOWARD TOOLE	✓	
REP. ROLPH TUNBY	✓	
REP. BARRY "SPOOK" STANG, CHAIRMAN		✓
TOTAL	14	2

13
DATE 2-19-91
HB 475



OFFICE OF PUBLIC INSTRUCTION

STATE CAPITOL
HELENA, MONTANA 59620
(406) 444-3095

Nancy Keenan
Superintendent

June 16, 1989

TO: Wayne Budt, Administrator, Transportation Division,
Public Service Commission

FROM: Gary Lee Watt, Acting Director,
Division of School Food Services

RE: USDA Donated Food Transportation Contract for the Division of
School Food Services, Office of Public Instruction

The Division of School Food Services will award a contract for hauling USDA donated foods to schools throughout Montana to H. R. Roberts and Sons of Fairfield, Montana, provided they obtain the proper Public Service Commission authority to do so.

In our certification to the Public Service Commission we support the H. R. Roberts and Sons application. We do so because the Roberts bid was considerably lower than the Watkins-Shepard bid (\$2.08 vs. \$2.63 per case for the first year with an overall estimated savings of over \$150,000 in three years). Federal regulations mandate that the state agency implement the most cost effective system for providing distribution services.

We wish to emphasize that the only dissatisfaction with Watkins-Shepard was the increased cost of transporting our donated foods. Since the money for shipping comes from state matching dollars given to local schools, it is our responsibility to acquire the necessary services for a fair and equitable price. The committee felt the Roberts bid met this criteria.

Point of information. One concern we have for having only one potential contractor is being at that contractor's mercy. If we have no way to protect our constituents, we will soon be forced to look to alternate methods of distribution - a fact we would like to avoid.

Time is of the essence. We need to have our hauler under contract and ready to transport donated foods by September 1, 1989. The commission's consideration of this fact will be appreciated.

GLW/sd

cc: Janet Miller
bcc: Bid Evaluation Committee
Gregg Groepper
Beda Lovitt
Watkins and Shepard Trucking
H. R. Roberts & Sons

EXHIBIT 14
DATE 2-19-91
HB 475

HOUSE OF REPRESENTATIVES

HIGHWAYS AND TRANSPORTATION COMMITTEE

ROLL CALL VOTE

DATE 2-19-91 BILL NO. 475 NUMBER _____

MOTION: Rep Ellis Moved to reconsider action
on HB 475^{as amended} and take from the table.
Motion Carried 9-8

NAME	AYE	NO
REP. FLOYD "BOB" GERVAIS, VICE-CHAIRMAN	✓	
REP. ERNEST BERGSAGEL		✓
REP. ROBERT CLARK		✓
REP. JANE DEBRUYCKER	✓	
REP. ALVIN ELLIS, JR.	✓	
REP. GARY FELAND		✓
REP. MIKE FOSTER	✓	
REP. PATRICK GALVIN	✓	
REP. DICK KNOX	✓	
REP. DON LARSON	✓	
REP. SCOTT MCCULLOCH		✓
REP. JIM MADISON	✓	
REP. LINDA NELSON		✓
REP. DON STEPPLER		✓
REP. HOWARD TOOLE		✓
REP. ROLPH TUNBY	✓	
REP. BARRY "SPOOK" STANG, CHAIRMAN		✓
TOTAL	9	8

EXHIBIT 15
DATE 2-19-91
HB 475

HOUSE OF REPRESENTATIVES

HIGHWAYS AND TRANSPORTATION COMMITTEE

ROLL CALL VOTE

DATE 2-19-91 BILL NO. HB 475 NUMBER _____

MOTION: Rep. Ellis Moved HB 475 Do pass.
as amended. Motion Carried 10-7

NAME	AYE	NO
REP. FLOYD "BOB" GERVAIS, VICE-CHAIRMAN	✓	
REP. ERNEST BERGSAGEL	✓	
REP. ROBERT CLARK		✓
REP. JANE DEBRUYCKER	✓	
REP. ALVIN ELLIS, JR.	✓	
REP. GARY FELAND		✓
REP. MIKE FOSTER	✓	
REP. PATRICK GALVIN	✓	
REP. DICK KNOX	✓	
REP. DON LARSON	✓	
REP. SCOTT MCCULLOCH		✓
REP. JIM MADISON	✓	
REP. LINDA NELSON		✓
REP. DON STEPPLER		✓
REP. HOWARD TOOLE		✓
REP. ROLPH TUNBY	✓	
REP. BARRY "SPOOK" STANG, CHAIRMAN		✓
TOTAL	10	7

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Hiways COMMITTEE BILL NO. HB 557
DATE 2-19-91 SPONSOR(S) Rep. Ream
PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
<u>Rick Brown</u>	<u>MT Board of Vet Affairs</u>	<u>X</u>	
<u>Walt Wheeling</u>	<u>AMERICAN DEFENDERS of Bataan Bataan Chapter, American Ex-pows + Corrigados</u>	<u>X</u>	
<u>Dick Baumbarger</u>	<u>Disabled Am. Veterans</u>	<u>X</u>	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Highways COMMITTEE BILL NO. HB 736
DATE 2-19-91 SPONSOR(S) Measure

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Brian McNitt	MEIC	✓	
Wayne Kruse	Missoula Bike Club	✓	
Linda Lee	Montana Audubon Soc. Fund	✓	
Stan Watkins	Flathead Area System of Trails (FAST)	✓	
Bill Saltsburg	Dept of Highway		✓

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HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Hewes COMMITTEE BILL NO. HB 867
DATE 2-19-91 SPONSOR(S) Gilbert

PLEASE PRINT

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
CURT LAINGEN	MT MOTOR CARRIERS ASSN	X	

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HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Hiram

COMMITTEE

BILL NO.

HB 570

DATE

2-19-91

SPONSOR(S)

J. Rice

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
<i>Anita Drews</i>	<i>dept of Justice Driver Services</i>	X	
<i>DARRELL Beckstrom</i>	<i>DRIVER IMPROVEMENT</i>	X	
<i>Rick Brown</i>	<i>MT Board of Vet. Affairs</i>	X	
<i>Peter Funk</i>	<i>Dept. of Justice</i>	X	

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HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Highways COMMITTEE BILL NO. HB 571
DATE 2-19-91 SPONSOR(S) J. Rice
PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
DARRELL Beckstrom	Driver Improvement	c	
Peter Funk	Dept. of Justice	✓	

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HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Hines COMMITTEE J. Rice BILL NO. HB 572
DATE 2-19-91 SPONSOR(S) J. Rice
PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
~~DARRELL BECKSTROM~~ ~~DRIVER IMPROVEMENT~~	DRIVER IMPROVEMENT	Y	
CURT LAINGEN	MT MOTOR CARRIERS ASSN	X	
Roger Tippy	MT BEER & WINE WHOLESALERS ASSN	X Amended	
Peter Funk	Dept. of Justice	✓	

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ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Always COMMITTEE BILL NO. HB 573
DATE 2-19-91 SPONSOR(S) J. Rice
PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
DARRELL BECKSTROM	DRIVER IMPROVEMENT	X	
Peter Funk	Dept. of Justice	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

MINUTES

MONTANA SENATE 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Dick Pinsoneault, on March 25, 1991, at 10:05 a.m.

ROLL CALL

Members Present:

Dick Pinsoneault, Chairman (D)
Bill Yellowtail, Vice Chairman (D)
Robert Brown (R)
Bruce Crippen (R)
Steve Doherty (D)
Lorents Grosfield (R)
Mike Halligan (D)
John Harp (R)
Joseph Mazurek (D)
David Rye (R)
Paul Svrcek (D)
Thomas Towe (D)

Members Excused: none

Staff Present: Valencia Lane (Legislative Council).

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Announcements/Discussion: none

HEARING ON HOUSE BILL 668

Presentation and Opening Statement by Sponsor:

Representative Paula Darko, District 2, said a similar version of HB 668 did not pass last session. She explained that the bill would allow suspension of a driver's license for a person under 18 years of age convicted of multiple offenses of possession of an intoxicating substance, and that currently a judge can only assess a \$50 fine.

Representative Darko advised the Committee that HB 668 follows with the discipline used in teaching, i.e. logical, progressive consequences. She said the bill came through the House with a strong vote, and that suspension of a license is optional for justices of the peace. Representative Darko urged the Committee to support HB 668.

Proponents' Testimony:

Patricia Bradley, Montana Magistrates, read from a short statement in support in support of HB 668.

Opponents' Testimony:

There were no opponents of the bill.

Questions From Committee Members:

Senator Towe asked if a license is suspended for 90 days or less for a first offense. Representative Darko replied that would be correct.

Closing by Sponsor:

Representative Darko advised the Committee that language was changed from "revoked" to "suspension" in order to have an official record of the suspension.

EXECUTIVE ACTION ON HOUSE BILL 668

Motion:

Senator Towe made a motion that HB 668 BE CONCURRED IN.

Discussion:

There was no discussion.

Amendments, Discussion, and Votes:

There were no amendments.

Recommendation and Vote:

The motion made by Senator Towe carried unanimously.

HEARING ON HOUSE BILL 559

Presentation and Opening Statement by Sponsor:

Representative Russell Fagg, District 89, said HB 559 was requested by the Department of Justice. He explained that the bill addresses DUI with regard to operation of planes and boats, as well as automobiles. Representative Fagg advised the Committee that an important part of the bill was stripped out in the House by Representative Measure, concerning testing for drugs by an arresting officer if he or she suspects drug use. He asked that this language be reinserted in the bill (Exhibit #1).

Representative Fagg stated that officers need to be able to test people for drugs, because they are able to arrest them for driving under the influence of drugs.

Proponents' Testimony:

Peter Funk, Office of the Attorney General, said the Department of Justice (DOJ), felt the language needed to be cleaned up, that DUI statutes needed to be consistent. He said another issue changes language from "presumptive" to "inference", and that the Department recognizes this is a Legislative decision. Mr. Funk stated it is a crime to drive under the influence of drugs, but tests are provided only for alcohol right now.

Mr. Funk advised the Committee that implied consent is in 64-108-402, MCA (Section 2 of the bill). He explained that testing is limited to two tests (page 4). Peter Funk proposed an amendment on page 7, line 17 (Exhibit #2). He said initial tests show only "metabolite", and not the actual presence of drugs because marijuana can remain in the blood for 30 days or more.

Mr. Funk stated he believes law enforcement needs some mechanism for developing the level of evidence. He explained that people cannot be convicted solely on the results of blood tests, and that no tests can occur under the implied consent statute until the arresting officer has made the decision to make an arrest (61-8-402, MCA).

Mr. Funk explained that the bill asks for the right to test a fairly small segment of drivers. He said "narcotic" on page 1 was changed to "dangerous" to mesh with the criminal system. Mr. Funk further stated that concentration of alcohol "in the blood" was changed to "in the person" on page 2, line 15 (62-8-407, MCA).

Mr. Funk further advised the Committee that the inference change is at the bottom of page 2, line 19 and the top of page 3, through line 6, concerning producing every element of offense beyond a reasonable doubt. He told the Committee that Leverett, (October or November 1990), was a negligent homicide prosecution, based on this presumption. Mr. Funk explained that DOJ now believes this is a dead issue. He urged the Committee to make this change in presumption language, and said that statute is unconstitutional right now.

Mr. Funk continued, and said the bottom of page 5 and the top of page 6 clarify that non-residents involved in implied consent tests would be handled the same as for a Montana resident. He stated that page 9, line 6 currently says that persons placed under arrest for DUI have the right to their own test. Mr. Funk recommended changing the language from "person tested" to "person under arrest".

In conclusion, Mr. Funk asked the Committee to strike Section 10, the implied consent provision for motor vehicles, as this is being done through HB 572.

John Connor, Montana County Attorneys, and County Prosecutor Services, Department of Justice, advised the Committee that he works with county prosecutors in serving their particular interests in changing language in statute. He said prosecutors like to look to the statutes, and that failure to change "presumptive" to "inference" would be devastating to validity, as it is not constitutional as it now stands.

Phil Lively, Director, Breath Alcohol Program, Division of Forensic Science, DOJ, Missoula, said he supports amending the bill concerning drug testing. He explained that officer training for alcohol has been expanded from 6 hours to 32 hours over the past few years. He said every arrest would not be tested for drugs, and that drugs testing is a very difficult area to develop evidence for (Exhibit #3).

Mr. Lively told the Committee that frequently a law enforcement office will see the need for further testing for performance, but is prevented from doing so because drug testing is not allowed. He said paraphernalia doesn't necessarily lead to a firm correlation of drug use.

Phil Lively further advised the Committee that Jim Hutchison, Senior Toxicologist for the Crime Lab, found that 26 percent of alcohol sample also showed drugs, and 33 percent of this group showed more than one drug "on board". He said the Lab pulled 100 random blood samples for alcohol and found 30 percent of them to be positive for marijuana. He said this indicates that people drive fairly frequently under the influence of drugs.

Mr. Lively further stated that alcohol is unique in the ability to establish a blood alcohol level to impairment, but this is not possible with other drugs. He said he got a verbal agreement from the National Highway Safety Council to have drug recognition and evaluation training, and that Montana has been turned down twice before for this training.

In conclusion, Mr. Lively stated that drug recognition and evaluation training can help officers to immediately make identifications and then help toxicologists. He urged the Committee to consider drug and multiple testing.

Opponents' Testimony:

There were no opponents of the bill.

Questions From Committee Members:

Senator Pinsoneault asked what happens if an arrestee says he wants his own test, and how a law enforcement office would handle

this. John Connor replied that prosecution must look at the overall picture to get the job done, and said the arrestee is entitled to refuse testing or get his own test. He commented that it could present some problems. Mr. Connor said that if the test is intended to be used in a trial, then prosecutors are entitled to testing information. He explained that, otherwise, the state is not entitled to get the results of a test.

Senator Pinsoneault asked what happens if the arrestee agrees to a test. John Connor replied that if it is exculpatory, the prosecutor would want this information.

Senator Towe asked about language on page 4, concerning probable cause for drugs. Peter Funk replied that, in his opinion, once an officer determines there is probable cause to place someone under arrest, that officer has the right to test for blood alcohol level and drugs.

Senator Towe asked if this would allow fairly routine drug testing. Peter Funk replied that, in terms of a legal challenge, he had no problems with the bill as it is drafted now. He further stated that he had no problem with inserting probably cause language. Peter Funk advised Senator Towe that existing language says "one test".

Senator Towe asked what a drug test identifies. Peter Funk replied that the first test makes identification, and the second test is confirmatory. Mr. Lively further advised Senator Towe that if a blood sample is taken, the lab can do general screening and quantitate to the level of a drug on the second test. He explained that it is more difficult if the lab is looking for alcohol, as they would need more blood. Mr. Lively commented that it would be best to do a breathalyzer first.

Senator Towe asked why blood tests would be used rather than urine tests. Mr. Lively replied that if it is psychoactive, it is in the blood, but this is not so for urine. He explained that marijuana would not be in blood one week after use.

Senator Towe asked what happens if a person is only given a citation and is not arrested. Peter Funk replied that this would not be a problem, but all DUIs are now placed under arrest.

Senator Svrcek asked about amendment language, "other competent evidence" on page 3, lines 7-10. Peter Funk replied that is in existing DUI statute. He said this means to defer to the judge handling this matter, and is saying the prosecutor must have evidence beyond the drug test that the judge is willing to admit, such as a field sobriety test.

Chairman Pinsoneault advised Senator Svrcek that there is always a video for "other competent evidence".

Senator Svrcek asked about the competency of testing labs, and if they would be NIDA-certified. Jim Hutchison, replied that NIDA-certified labs were established as protection for pre-employment screening, as these labs may employ people who may not have proper training or education. He said the Forensic lab deals with criminal information, and requires a minimum of a B.S. or an M.S., and that employees are trained, forensically, by colleagues. Mr. Hutchison stated there is no specific certification, but the lab is certified by the Association of Medical Examiners and the Board of Toxicologists. He commented the lab would pass a NIDA inspection.

Senator Svrcek asked if an officer has sanction to search a vehicle if he or she suspects the use of drugs. Mr. Lively replied he is not familiar with search and seizure, but officers do ask to search vehicles, are many times given permission, and do find drugs. He explained that open view is also available to law enforcement officers.

Senator Svrcek asked about Mr. Lively's "multiple" testing statement. Mr. Lively replied that science may mean 100 analyses of a sample and law may mean a sample. He commented that maybe language needs to be changed to "a sample or samples".

Senator Svrcek asked if these blood samples become the property of the state, if they are labeled by person, and if the defendants are aware of random testing on those samples. Mr. Lively replied this was done as in investigative process without thought of prosecution, and was done randomly. He said there are no names or numbers on the samples.

Peter Funk commented that if law enforcement can't develop a procedure to eliminate multiple testing without harassment, they shouldn't have the right to test.

Closing by Sponsor:

Representative Fagg asked the Committee to remember that the person doesn't have to take the tests, but would lose his or her drivers' license. He asked the Committee to pass the bill with the proposed amendment.

HEARING ON HOUSE BILL 572

Presentation and Opening Statement by Sponsor:

Representative Jim Rice, District 43, said he was presenting the bill with some reluctance, as it is rather oppressive-looking, but the state needs to comply with federal statutes or it will lose between 5 and 10 percent of federal dollars. He explained that HB 572 raises the penalty for a second-offense commercial DUI from 10 years to life suspension.

Proponents' Testimony:

Peter Funk, Office of the Attorney General, said the bill is based on the 1986 federal Motor Carrier Act, and reflects a very harsh view by the federal government (Exhibits #4 and #5).

Opponents' Testimony:

There were no opponents of HB 572.

Questions From Committee Members:

Chairman Pinsoneault asked what the definition of "hazardous material" is in the law. Peter Funk replied the current definition is in the code of federal regulations, and that a long list of substantial materials fall into this category.

Chairman Pinsoneault asked if the driver knows he is carrying hazardous materials. Peter Funk replied that a separate drivers' license, and tests are required to haul hazardous materials. He said specific marking, called "placarding" is also required.

Senator Harp asked if this bill applies to everything over 26,000 GVW. Peter Funk replied it does.

Senator Harp said he believes definition of "hazardous material" is needed in the bill. He asked if the federal requirement is a three-year suspension for a first offense. Peter Funk replied it is.

Senator Towe said the bill really goes beyond what is necessary to comply with federal code. Peter Funk referred to page 4, line 20, and said Montana tried to guess what federal sanctions would be and guessed wrong. He said the federal government said "life" instead of ten years.

Closing by Sponsor:

Representative Rice advised the Committee that the commercial truckers proposed an amendment which was adopted in the House.

HEARING ON HOUSE BILL 571**Presentation and Opening Statement by Sponsor:**

Representative Jim Rice, District 43, said HB 571 is a technical bill, and that Sections 1 and 2 address habitual traffic offenders. He explained that the bill makes sure other sections of code are referred to allowing a provisional license prior to termination of the three-year suspension period.

Representative Rice stated that Section 3 changes the penalty, for those arrests for driving again while their license is suspended for habitual traffic offenses, of an additional year.

Proponents' Testimony:

Peter Funk, Office of the Attorney General, Said language was inserted in Section 3 (top of page 3), to tack on a light period at the end of the suspension period if a driver is caught driver during that suspension period. He said habitual traffic offenders now have 30 conviction points within three years, but the suspension period is not extended. He said DUI is 10 points.

Opponents' Testimony:

There were no opponents of the bill.

Questions From Committee Members:

Senator Svrcek asked why the drafters opted for "shall" and not "may" at the top of page 3 of the bill. Peter Funk replied there is a difference between the sentencing (judicial) process, and the suspension (civil) process. He stated that almost all of the drivers' licenses suspended and revoked are upon receipt of notice of conviction.

Chairman Pinsoneault said this causes a problem for defense counsel, if part of that person's job involves operating a motor vehicle.

Closing by Sponsor:

Representative Rice made no closing comments.

HEARING ON HOUSE BILL 573

Presentation and Opening Statement by Sponsor:

Representative Jim Rice, District 43, said he would leave the technical explanation of HB 573 to Peter Funk. He said the bill was originally introduced in 1989 and was killed, so he had it referred to a different committee this session. Representative Rice explained that the bill passed the House floor on a compromise.

Proponents' Testimony:

Peter Funk, Office of the Attorney General, said his office has wanted to change "final conviction" language for years. He explained that the problem is caused by lines 14 and 15 in the original bill, and line 16 in the amended bill. Mr. Funk commented that there is confusion over what "final conviction" means. He said the Department looked at case law nationwide, and concluded

that it was a combination of finding of guilt and imposition of a sentence. Mr. Funk explained that the Department counts motor vehicle convictions when they are coupled with a sentence, and that he did not believe that convictions should not be recorded.

Mr. Funk further advised the Committee, that if the Department follows this conclusion, it cannot count deferred imposition of sentence. He stated that DOJ doesn't want to count situations where there is negligent homicide or negligent vehicular assault, but most of those people only get a deferred imposition of sentence. Mr. Funk explained that the insurance companies don't know about these incidents then, because there is no motor vehicle record.

Peter Funk told the Committee the Department believes this is ridiculous. He commented that the House Judiciary Committee has killed this bill twice, and that there is compromise language in the bill now, stating that it can be counted "if the underlying offense is a felony". Mr. Funk asked the Committee not to put the bill back in its original form, as the House would kill it.

Opponents' Testimony:

There were no opponents of the bill.

Questions From Committee Members:

Senator Towe asked if this legislation were limited strictly to traffic offenses. Peter Funk replied it is, and said the bill applies to all of Title 61 relative to the exclusion to motor vehicles in general. He said Parts 1 and 3 of Chapter 5 refer to licensing activities that the Department takes, and that 61-11-101 and -102, MCA, refer to general record-keeping provisions. Mr. Funk stated that the definition of conviction has no application outside the motor vehicle area.

Senator Towe asked if felony deferred imposition of sentence should remain on record after probation is fulfilled. Peter Funk replied it should not. He said Title 46, relative to deferred imposition of sentence, would apply, and mandates this as confidential criminal justice information after the terms of deferral are fulfilled.

Senator Svrcek asked if these incidents remain part of the public record for a period of time. Peter Funk replied they are deferred and then become confidential, which does give these people a break. He explained that his sympathy extends to the point of imposing a deferred sentence.

Mr. Funk cited a case in Lake County where a California woman was killed by a drunk driver who never lost (his) license. He said the Department received many calls concerning this incident.

Senator Svrcek asked if there is a difference between maintaining confidential records and expunging them. Peter Funk replied that there is a huge difference. He explained that the 1989 Session completely eliminated the language of expungement, but the Department feels the records should exist somewhere if a negligent homicide or negligent vehicular assault happens a second time. He said the end result is this information is labeled as confidential criminal justice information.

Chairman Pinsoneault said he once called at least six different insurance carriers to check their policy on careless and reckless driving citations. He advised the Committee that he found the companies use their own discretion, and that this varies.

Closing by Sponsor:

Representative Rice told the Committee that the 1989 Legislature passes legislation to record deferred imposition of sentence for all but traffic fines. He said the House found out the Silverbow County can provide deferred sentences for DUI.

DISCUSSION ON HOUSE BILL 559

Senator Towe asked for time to prepare amendments concerning the reinstatement of drugs in HB 559.

Senator Halligan said he would oppose adding probable cause.

Senator Towe stated he had four amendments relating to drugs.

Senator Pinsoneault stated the Committee would wait for the amendments.

EXECUTIVE ACTION ON HOUSE BILL 572

Motion:

Senator Harp made a motion that HB 572 BE CONCURRED IN.

Discussion:

There was no discussion.

Amendments, Discussion, and Votes:

There were no amendments.

Recommendation and Vote:

The motion made by Senator Harp carried unanimously. Senator Pinsoneault said he would carry HB 572.

EXECUTIVE ACTION ON HOUSE BILL 571

Motion:

Senator Harp made a motion that HB 571 BE CONCURRED IN.

Discussion:

There was no discussion.

Amendments, Discussion, and Votes:

There were no amendments.

Recommendation and Vote:

The motion made by Senator Harp carried unanimously. Senator Towe was asked to carry the bill.

EXECUTIVE ACTION ON HOUSE BILL 573

Motion:

Senator Svrcek made a motion that HB 573 BE CONCURRED IN.

Discussion:

There was no discussion.

Amendments, Discussion, and Votes:

There were no amendments.

Recommendation and Vote:

The motion made by Senator Svrcek carried unanimously. Senator Svrcek was asked to carry the bill.

ADJOURNMENT

Adjournment At: 12:00 noon.

Dick Pinsoneault

Senator Dick Pinsoneault, Chairman

Joann T. Bird

Joann T. Bird, Secretary

DP/jtb

ROLL CALL

SENATE JUDICIARY

COMMITTEE

52nd LEGISLATIVE SESSION -- 1991

Date 25 Mar 91

NAME	PRESENT	ABSENT	EXCUSED
Sen. Pinsoneault	/		
Sen. Yellowtail	/		
Sen. Brown	/		
Sen. Crippen	/		
Sen. Doherty			
Sen. Grosfield	/		
Sen. Halligan	/		
Sen. Harp	/		
Sen. Mazurek	/		
Sen. Rye	/		
Sen. Svrcek	/		
Sen. Towe	/		

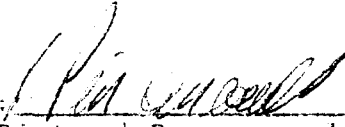
Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 25, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 668 (third reading copy -- blue), respectfully report that House Bill No. 668 be concurred in.

Signed: 

Richard Pinsoneault, Chairman

AP 3/25/91
Am. Coord.

SB 3/25 12:30
Sec. of Senate

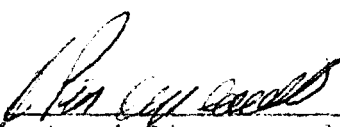
HB 668: Amended 4/11/91
See corrected
SR dated 4-1-91
✓

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 25, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 571 (third reading copy -- blue), respectfully report that House Bill No. 571 be concurred in.

Signed: 

Richard P. Pinsonault, Chairman

SP-3-25-91
And. Coord.

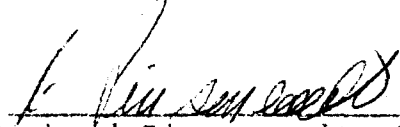
SP-3/25/2020
Sec. of Senate

SENATE STANDING COMMITTEE REPORT

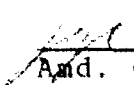
Page 1 of 1
March 25, 1991

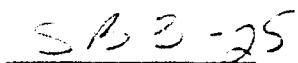
MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 572 (third reading copy -- blue), respectfully report that House Bill No. 572 be concurred in.

Signed: 

Richard Pinsoneault, Chairman

 3-25-91
And. Coord.

 3-25 12:30
Sec. of Senate

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 25, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 573 (third reading copy as amended -- blue), respectfully report that House Bill No. 573 be concurred in.

Signed: *Richard Finconeault*
Richard Finconeault, Chairman

50000
(1000)

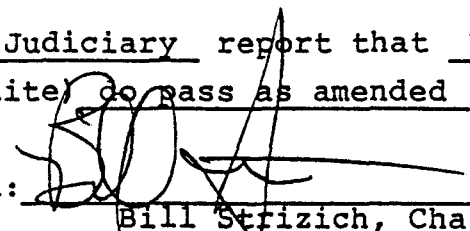
441 3-25-91
Amd. Coord.
512 3-25
Sec. of Senate

EX #1
25 Mar 91 2-21-9
HB 559 vme
HOUSE STANDING COMMITTEE REPORT

February 20, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that House Bill 559 (first reading copy -- white) do pass as amended.

Signed: 
Bill Strizich, Chairman

And, that such amendments read:

1. Page 3, line 25.
Page 4, line 7.
Page 4, end of line 22 and beginning of line 23.
Page 5, line 8.
Page 5, end of line 16 and beginning of line 17
Page 7, lines 4 and 19.
Page 8, line 10.
Page 9, lines 16 and 18.
Page 24, line 9.
Page 26, lines 9 and 16.
Page 27, line 2.

~~Strike: "or tests"~~

Insert →

2. Page 4, lines 14 through 16.
~~Strike: "A" on line 14 through end of line 16~~

Insert →

3. Page 4, lines 3 and 4.
Page 7, lines 14 and 15.
Page 9, lines 2 and 3.
Page 9, lines 11 and 12.
Page 23, line 24.
Page 24, lines 12 and 13.
Page 25, line 20.
Page 27, line 5 and line 13.
~~Strike: ", drugs, or a combination of the two"~~

Insert →

4. Page 26, line 11.

~~Strike: "L"~~

Insert →

5. Page 26, line 12.
~~Strike: "drugs, or a combination of the two"~~

Insert →

Amendment to House Bill No. 559
Third Reading Copy (Blue)

EX #2
25 Mar 91
HB 559

Prepared by Peter Funk
Department of Justice
March 25, 1991

1. Page 7, line 17.

Following: "admissible"

Strike: ";"

Insert: ". A person may not be convicted of a violation of 61-8-401 based upon the presence of a drug or drugs in his person unless some other competent evidence exists tending to establish that the person was under the influence of a drug or drugs while driving or in actual physical control of a motor vehicle within this state;

STATE OF MONTANA
DEPARTMENT OF JUSTICE
FORENSIC SCIENCE DIVISION

Ex #3
25 Mar 91
HB 559

Marc Racicot
Attorney General



Broadway Building
554 West Broadway - 6th Floor
Missoula, MT 59802

Mister Chairman and Members of the Senate Judiciary Committee,

My name is Phillip I. Lively, I am employed by the Forensic Science Division, Department of Justice, where I am the Director of the Breath Analysis Program.

The following testimony is in regards to the changes and amendments in House Bill 559, concerning Title 61 chapter 8 part 4, as presented by the House Judiciary Committee

THE PROPOSED SECTIONS OF THE BILL CONCERNING MULTIPLE TESTING AND THE ADDITION OF DRUGS, OR ANY COMBINATION OF THE TWO WERE PRESENTED AS FOLLOWS:

THE PROPOSED WORDING IS UNDERLINED

61-8-402 (THE IMPLIED CONSENT SECTION)

BLOOD, BREATH, OR URINE TESTS. (1) ANY PERSON WHO OPERATES OR IS IN ACTUAL PHYSICAL CONTROL OF A VEHICLE UPON THE WAYS OF THE STATE OPEN TO THE PUBLIC SHALL BE DEEMED TO HAVE GIVEN CONSENT, SUBJECT TO THE PROVISIONS OF 61-8-401, TO A TEST OR TESTS OF HIS BLOOD BREATH, OR URINE FOR THE PURPOSES OF DETERMINING ANY MEASURED AMOUNT OR PRESENCE OF ALCOHOL, DRUGS, OR ANY COMBINATION OF THE TWO IF ARRESTED BY A PEACE OFFICER FOR DRIVING OR FOR BEING IN ACTUAL PHYSICAL CONTROL OF A VEHICLE WHILE UNDER THE INFLUENCE OF ALCOHOL, DRUGS OR ANY COMBINATION OF THE TWO. THE TEST OR TESTS SHALL BE ADMINISTERED AT THE DIRECTION OF A POLICE OFFICER HAVING REASONABLE GROUNDS TO BELIEVE THE PERSON TO HAVE BEEN DRIVING OR IN ACTUAL PHYSICAL CONTROL OF A VEHICLE UPON THE WAYS OF THE STATE OPEN TO THE PUBLIC WHILE UNDER THE INFLUENCE OF ALCOHOL, DRUGS, OR ANY COMBINATION OF THE TWO. THE ARRESTING OFFICER MAY DESIGNATE WHICH TEST OR TESTS SHALL BE ADMINISTERED. A PERSON MAY NOT BE GIVEN MORE THAN TWO TESTS UNLESS THE PERSON CHOOSES TO HAVE AN ADDITIONAL TEST AS PROVIDED IN 61-8-405 (2)

61-8-404 (EVIDENCE ADMISSIBILITY)

(A) EVIDENCE OF ANY MEASURED AMOUNT OR DETECTED PRESENCE OF ALCOHOL, DRUGS, OR ANY COMBINATION OF THE TWO IN THE PERSON AT THE TIME OF THE ACT ALLEGED, AS SHOWN BY AN ANALYSIS OF HIS BLOOD, BREATH OR URINE IS ADMISSIBLE...

AS TO THE NEED FOR TESTING INDIVIDUALS FOR THE PRESENCE OF DRUGS IN A DRIVING UNDER THE INFLUENCE CASE:

THE INCREASING ROLE OF DRUGS, ILLICIT OR OTHERWISE, IN OUR EVERY DAY LIFE IS A CONCERN THAT I AM SURE ALL OF US HERE SHARE. EVERY DAY THE NEWS MEDIA REPORTS ON THE EVER ESCALATING USE AND ABUSE OF DRUGS AND THEIR CONSEQUENCES. THIS CONDITION EXISTS THROUGHOUT THE COUNTRY AND UNFORTUNATELY MONTANA IS NOT IMMUNE.

WHEN ONE CONTEMPLATES THE "DRUG PROBLEM" ONE SPECIFIC FACET THAT MUST BE ADDRESSED IS THE ROLE OF DRUGS AND THE SAFE OPERATION OF A MOTOR VEHICLE.

THE ROLE OF ALCOHOL IN MOTOR VEHICLE OPERATION AND FATAL ACCIDENTS IS WELL ESTABLISHED, HOWEVER THE ROLE OF DRUGS IS JUST NOW BECOMING APPARENT.

IN SUPPORT OF MODIFYING THE CURRENT IMPLIED CONSENT PROVISION (61-8-402) OF THE DRIVING UNDER THE INFLUENCE LAW, THE FOLLOWING STUDIES AUGMENTED BY DATA COLLECTED BY THE FORENSIC SCIENCE DIVISION IS OFFERED.

(2)

IN 1983 THE INSURANCE INSTITUTE FOR HIGHWAY SAFETY FUNDED A STUDY CONCERNING ALCOHOL AND DRUG PRESENCE IN FATALLY INJURED MALE DRIVERS. THE STUDY WAS BASED ON DATA COLLECTED FROM LOS ANGELES COUNTY, ORANGE COUNTY, SACRAMENTO COUNTY, AND SAN DIEGO COUNTY, CALIFORNIA. THE STUDY CONCERNED ITSELF WITH MALES BETWEEN THE AGES OF 15 TO 34 YEARS OF AGE WHO WERE KILLED IN AUTOMOBILE ACCIDENTS. THE NUMBER OF INDIVIDUALS WHO MET THE STUDY CRITERIA WAS 440. THEIR FINDINGS ARE SUMMARIZED BELOW:

TEST POPULATION = 440

SAMPLE SELECTED FOR ANALYSIS WAS BLOOD

SAMPLES WERE ANALYZED FOR ALCOHOL, MARIJUANA, COCAINE, DIAZEPAM (VALIUM), PHENCYCLIDINE (PCP), AND METHAMPHETAMINE (SPEED).

OF THE 440 INDIVIDUALS 308 OR 81% WERE POSITIVE FOR ALCOHOL AND OR DRUGS

OF THE 81%, 70% WERE POSITIVE FOR ALCOHOL
43% HAD TWO OR MORE DRUGS ON BOARD
37% WERE POSITIVE FOR MARIJUANA
11% WERE POSITIVE FOR COCAINE
4% WERE POSITIVE FOR DIAZEPAM
4% WERE POSITIVE FOR PHENCYCLIDINE
3% WERE POSITIVE FOR METHAMPHETAMINE

EXCEPT FOR ALCOHOL, DRUGS WERE INFREQUENTLY FOUND ALONE IN THE SYSTEM, AND WERE TYPICALLY IN COMBINATION WITH HIGH ALCOHOL CONCENTRATIONS.

OTHER STUDIES HAVE DEMONSTRATED SIMILAR FINDINGS.

IN ONTARIO, CANADA 26% OF NON-FATAL INJURED DRIVERS TESTED POSITIVE FOR DRUGS OTHER THAN ALCOHOL.

IN ROCHESTER, NEW YORK 22% OF NON-FATAL INJURED DRIVERS PERCENT TESTED POSITIVE FOR DRUGS OTHER THAN ALCOHOL.

IN SAN BERNARDINO COUNTY 21% OF FATAL INJURED DRIVERS TESTED POSITIVE FOR DRUGS OTHER THAN ALCOHOL.

OF SPECIAL NOTE A STUDY CONDUCTED IN SWEDEN IDENTIFIED THAT 21% OF INDIVIDUALS ARRESTED (NO ACCIDENT OR INJURY INVOLVED) FOR SUSPICION OF DRIVING UNDER THE INFLUENCE OF ALCOHOL WERE DRUGGED IMPAIRED.

TO BRING THESE FIGURES INTO FOCUS FOR MONTANA THE FORENSIC SCIENCE DIVISION, TOXICOLOGY SECTION PROVIDES THE FOLLOWING DATA.

IN 1990 585 SAMPLES WERE SUBMITTED AS MOTOR VEHICLE ACCIDENTS (MVA) AND DRIVING UNDER THE INFLUENCE OF DRUGS (DUID)

DRUGS WERE FOUND TO BE PRESENT IN 26% OF THE SAMPLES

(3)

THE BREAKDOWN FOR THE DRUGS OF MAJOR CONCERN IS AS FOLLOWS:

LOCAL ANAESTHETIC	18%
(LIDOCAINE)	
NARCOTICS	11%
(CODEINE)	
TRANQUILIZERS	21%
(VALIUM)	
SEDATIVES/HYPNOTIC	3%
STIMULANTS	7%
(COCAINE)	
(AMPHETAMINE)	
ANTICONVULSANT	9%
ANTIDEPRESSANTS	5%
(MOOD ELEVATORS)	
BARBITURATES	2%

OF THE CASES DETERMINED POSITIVE, 31% HAD TWO OR MORE DRUGS IN SYSTEM.

IT WAS NOT UNTIL JUST RECENTLY, THAT THE FORENSIC SCIENCE DIVISION HAD THE CAPABILITY TO SCREEN FOR MARIJUANA IN BLOOD. IN AN EFFORT TO ESTIMATE THE USE LEVEL OF MARIJUANA IN THIS CATEGORY, THE TOXICOLOGY DIVISION SCREENED 100 RANDOMLY SELECTED SAMPLES AND FOUND 30% TO BE POSITIVE FOR MARIJUANA.

AS TO THE CREATION OF MULTIPLE TESTS UNDER 61-8-402; THE IMPLIED CONSENT SECTION:

THE MAJORITY OF DRIVERS STOPPED FOR THE CLASSIC SYMPTOMS OF DRIVING UNDER THE INFLUENCE WILL BE TESTED FOR ALCOHOL. THE FOCAL POINT OF THE POLICE OFFICER IN THE PAST HAS ALWAYS BEEN ALCOHOL. THIS FOCUS IS NOW CHANGING AND TRAINING FOR LAW ENFORCEMENT PERSONNEL IS NOW BRANCHING INTO THE AREA OF DRUG AWARENESS AND DETECTION. UNDER THE CURRENT IMPLIED CONSENT PROVISION TWO ELEMENTS SEVERELY RESTRICT THE ABILITY TO CONDUCT AN ANALYSIS FOR THE PRESENCE OF DRUGS.

NUMBER ONE. THE CURRENT IMPLIED CONSENT PROVISION STATES THAT AN INDIVIDUAL MUST SUBMIT A SAMPLE OF BREATH, BLOOD, OR URINE "TO DETERMINE THE ALCOHOL CONTENT OF THE BLOOD". THIS STATEMENT THEREFORE PROHIBITS THE COLLECTION OF A SAMPLE FOR DETERMINING THE PRESENCE OF A DRUG.

NUMBER TWO. THE CURRENT IMPLIED CONSENT PROVISION ALSO REFERS TO "A TEST". THIS HAS ALWAYS BEEN A POINT OF CONFUSION BETWEEN SCIENCE AND LAW. "A TEST" IN SCIENCE MAY MEAN A NUMBER OF INDIVIDUAL ANALYSES PERFORMED ON A NUMBER OF SAMPLES TO REACH A CONCLUSION. HOWEVER, IN LAW "A TEST" IS NORMALLY INDICATIVE OF A SINGLE ANALYSIS ON A SINGLE SAMPLE, HENCE THE INABILITY TO TEST FOR BOTH ALCOHOL AND DRUGS UTILIZING SEPARATE SAMPLES. THIS CREATES A MAJOR PROBLEM IN DEALING WITH DRIVERS IN TODAY'S DRUG EFFECTED SOCIETY.

(4)

THE MAJORITY OF INDIVIDUALS ARRESTED FOR DUI WILL BE UNDER THE INFLUENCE OF ALCOHOL AND WILL BE OFFERED A BREATH ANALYSIS TO DETERMINE THEIR ALCOHOL CONCENTRATION. HOWEVER, THOSE INDIVIDUALS USING DRUGS ALSO KNOW THIS, AND EMPLOY THE TECHNIQUE OF GULPING DOWN ONE OR TWO DRINKS RIGHT BEFORE THEY DRIVE. WHEN A POLICE OFFICER STOPS THIS INDIVIDUAL, THE FIRST OBSERVATION IS THAT THERE IS A SMELL OF AN ALCOHOLIC BEVERAGE PRESENT AND THAT POLICE OFFICER IS NOW IN A MIND SET OF ALCOHOL. PERFORMANCE TESTS ARE CONDUCTED, THE DECISION TO ARREST IS REACHED, THE INDIVIDUAL IS TRANSPORTED TO THE STATION WHERE A BREATH ANALYSIS IS PERFORMED AND THE RESULT IS AN ALCOHOL CONCENTRATION WHICH IS INCONSISTENT WITH THE PERSONS ACTIONS.

THE OBSERVED IMPAIRMENT IS A RESULT OF DRUGS AND NOT ALCOHOL. AT THIS POINT THE OFFICER IS STOPPED. "A TEST" HAS BEEN PERFORMED AND THE INDIVIDUAL CANNOT BE TESTED ANY FURTHER EVEN THOUGH IT IS NOW OBVIOUS THAT THE IMPAIRMENT IS A RESULT OF A SUBSTANCE OTHER THAN ALCOHOL.

THE ADDITION OF MULTIPLE TESTING IN THE IMPLIED CONSENT SECTION ALLOWS THE LAW ENFORCEMENT OFFICER TO HANDLE SITUATIONS SUCH AS THE VERY COMMON ONE DESCRIBED. IF ONE IS REQUIRING PROBABLE CAUSE FOR THE PRESENCE OF DRUGS THERE IS NONE BETTER THAN AN ALCOHOL CONCENTRATION INCONSISTENT WITH THE PERSONS OBSERVABLE ACTIONS AND ABILITIES.

IT SHOULD BE POINTED OUT THAT THE SECOND TEST IS PRIMARILY FOR DRUGS, NOT TO BE ABLE TO CONDUCT A SECOND BREATH OR BLOOD ALCOHOL ANALYSIS. FURTHER, IF A COMPLETED BREATH ANALYSIS HAS BEEN CONDUCTED, THE FORENSIC SCIENCE DIVISION WILL NOT RE-EVALUATE THE SUBMITTED SECOND SAMPLE FOR THE ALCOHOL CONCENTRATION, UNLESS EXTENUATING CIRCUMSTANCES ARE PRESENT AND DOCUMENTED.

THE PRIMARY SAMPLES FOR THE ANALYSIS OF ALCOHOL AND DRUGS ARE; BREATH OR BLOOD FOR THE ALCOHOL AND BLOOD FOR THE PRESENCE OF DRUGS. THERE IS ALWAYS CONCERN AS TO THE VALIDITY OF A URINE SAMPLE IN A DUI CASE SINCE THE SUBSTANCES DETECTED IN THE URINE ARE NOT THE ACTUAL DRUG OR DRUGS BUT A METABOLITE OF THE DRUG OR DRUGS. IN FACT IF URINE WERE TO BE STRICKEN FROM THE IMPLIED CONSENT SECTION THE FORENSIC SCIENCE DIVISION WOULD NOT OBJECT.

THE DELETION OF THE ABILITY AND AUTHORITY TO OBTAIN AND TEST MULTIPLE BIOLOGICAL SAMPLES HAVE A MULTI-PRONGED EFFECT.

1. THERE CANNOT BE ANY VIABLE PROSECUTION OF A SUSPECT FOR DRIVING UNDER THE INFLUENCE OF DRUGS. NOT ONLY WAS THE REFERENCES TO DRUGS ELIMINATED FROM THE IMPLIED CONSENT PORTION (61-8-402) BUT ALL REFERENCES TO DRUGS IN THE EVIDENCE ADMISSIBILITY SECTION (61-8-404) WERE REMOVED AS WELL.

2. SINCE THE DIVISION OF FORENSIC SCIENCE REQUESTED SPECIFIC AUTHORITY TO ANALYZE OBTAINED BIOLOGICAL SAMPLES FOR THE PRESENCE OF DRUGS AND WAS DENIED THAT AUTHORITY, IT IS QUITE POSSIBLE THAT WE MAY NO LONGER BE ABLE TO PROVIDE THAT SERVICE FOR THE LAW ENFORCEMENT AGENCIES ON A DRIVING UNDER THE INFLUENCE ARREST WHERE DRUGS ARE SUSPECT.

(5)

3. THE ABILITY FOR A LAW ENFORCEMENT OFFICER TO CONDUCT TESTS IN AN EFFORT TO DETECT AN INDIVIDUAL DRIVING UNDER THE INFLUENCE OF DRUGS IS ELIMINATED. THE NATIONAL HIGHWAY TRAFFIC SAFETY DIVISION PROVIDES TRAINING FOR LAW ENFORCEMENT OFFICERS THROUGH A PROGRAM KNOWN AS THE "DRUG RECOGNITION AND EVALUATION TRAINING". THIS PROGRAM HAS PROVEN TO BE EXTREMELY SUCCESSFUL IN THOSE AREAS WHICH HAVE RECEIVED AND IMPLEMENTED THE TRAINING. THOSE TRAINED OFFICERS CAN NOT ONLY DETECT THE PRESENCE OF A DRUG BUT CAN ALSO CORRELATE THE OBSERVABLE IMPAIRMENT TO A GROUP OR GROUPS OF DRUGS. I RECENTLY RECEIVED VERBAL APPROVAL FROM ONE OF THE NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION REPRESENTATIVES, WASHINGTON D.C. THAT THEY WOULD CONDUCT SUCH A TRAINING FOR OUR LAW ENFORCEMENT OFFICERS, HOWEVER, THE MAJOR REQUIREMENT FOR RECEIVING THE TRAINING IS THAT THE LAW ALLOWS FOR MULTIPLE TESTING. WE NOW WILL NOT QUALIFY FOR THIS IMPORTANT AND PROGRESSIVE ADDITION TO THE LAW ENFORCEMENT ARSENAL AGAINST DRUGS. THIS TOOL IS NOT ONLY BENEFICIAL TO THE ENFORCEMENT OF THE DUI PROGRAM BUT IT IS ALSO VERY HELPFUL IN IDENTIFYING DRUG USAGE IN OTHER SITUATIONS WHERE DRUGS USE IS SUSPECTED.

FROM COMMENTS GATHERED CONCERNING THE HOUSE JUDICIARY ACTION IT APPEARS THAT THEIR PRIMARY CONCERN WAS WHETHER A PARTICULAR LEVEL OF A DRUG ALSO INDICATED IMPAIRMENT OF AN INDIVIDUAL.

HISTORICALLY WE HAVE ALWAYS RELATED IMPAIRMENT, OR MORE CORRECTLY BEING UNDER THE INFLUENCE, TO THE ALCOHOL CONCENTRATION. THE .10% ALCOHOL CONCENTRATION HAS BEEN USED AS THE GUIDELINE FOR THIS ASSESSMENT FOR A NUMBER OF YEARS. THE FACT IS THAT WITH ALCOHOL WE CAN MAKE A STATEMENT SUCH AS "IF AN INDIVIDUAL HAS AN ALCOHOL CONCENTRATION OF .10% OR HIGHER THAT INDIVIDUAL'S ABILITY TO OPERATE A VEHICLE SAFELY HAS BEEN DIMINISHED". THIS STATEMENT IS SCIENTIFICALLY CORRECT (IN FACT SCIENTIFICALLY CONDUCTED TESTING HAS ESTABLISHED BEYOND A DOUBT THAT THE LEVEL SHOULD IN FACT BE .08%) HOWEVER, THE SAME STATEMENT DOES NOT HOLD TRUE FOR OTHER DRUGS.

TO ILLUSTRATE THIS POINT, AN EXCERPT FROM A LETTER PREPARED BY JIM HUTCHINSON, CHIEF TOXICOLOGIST FOR THE FORENSIC SCIENCE DIVISION IS INCLUDED:

JUST RECENTLY A COLLEAGUE AND I RETURNED FROM THE 43RD ANNUAL CONFERENCE OF THE AMERICAN ACADEMY OF FORENSIC SCIENCE. THIS ANNUAL MEETING IS A GATHERING OF THE WORLD'S LEADING AUTHORITIES IN THE AREA OF CRIMINALISTIC, JURISPRUDENCE, PATHOLOGY, BIOLOGY, TOXICOLOGY, PSYCHIATRY, ETC. THE PURPOSE OF THE MEETING IS THE EXCHANGE OF ANALYTICAL IDEAS, INFORMATION FOUND THROUGH RESEARCH, EXCHANGE OF CONCEPTS WITH PEERS AND COLLEAGUES AND THEREBY FURTHER THE DISCIPLINE OF FORENSIC SCIENCE.

WE WERE FORTUNATE TO ATTEND AN EIGHT HOUR WORKSHOP ENTITLED "THE EFFECT OF DRUGS ON HUMAN PERFORMANCE: DRUGS AND DRIVING, DRUGS IN THE WORK PLACE. THE WORKSHOP WAS SPONSORED BY THE U.S. DEPARTMENT OF TRANSPORTATION AND THE NATIONAL HIGHWAY SAFETY ADMINISTRATION.

(6)

ONE OF THE BASIC QUESTIONS OF THOSE IN ATTENDANCE WAS; "CAN WE IN FACT ESTABLISH THAT A PARTICULAR BLOOD DRUG LEVEL DETERMINES IMPAIRMENT?" THIS IS A QUESTION THAT HAS BEEN INVESTIGATED OVER AND OVER FOR THE PAST 20 YEARS.

RESEARCHERS COMMENCING AS EARLY AS THE 1920'S BEGAN STUDYING ALCOHOL AND IT'S EFFECTS ON HUMAN PERFORMANCE. THESE STUDIES HAVE CONSISTENTLY ESTABLISHED THAT A PARTICULAR ALCOHOL LEVEL CAN SCIENTIFICALLY DETERMINE IMPAIRMENT. THE RESULTS OF THESE MANY HUNDREDS OF STUDIES HAVE BEEN ACCEPTED AND AGREED TO BY RECOGNIZED AUTHORITIES AROUND THE WORLD.

BEGINNING IN THE 1950'S MAJOR STUDIES WERE BEGAN TO INVESTIGATE THE EFFECTS OF LICIT AND ILLICIT DRUGS ON HUMAN PERFORMANCES. ONE FACTOR BECAME VERY APPARENT VERY QUICKLY. EVEN THOUGH THE GENERAL POPULATION REACTED TO ALCOHOL IN A CONSISTENT MANNER IN REGARDS TO IMPAIRMENT AND SPECIFIC ALCOHOL CONCENTRATIONS THE SAME COULD NOT BE SAID WHEN EVALUATING OTHER DRUGS. THE PHARMACOLOGICAL AFFECTS OF ALCOHOL ARE IN FACT INDEPENDENT OF AGE, SEX, AND INDIVIDUAL BIOLOGICAL METABOLISM--MAKING ALCOHOL A VERY UNIQUE DRUG. UNLIKE ALCOHOL THE PHARMACOLOGICAL AFFECTS OF DRUGS CAN VARY FROM INDIVIDUAL TO INDIVIDUAL DEPENDING ON AGE, SEX ETC. THE SAME BLOOD LEVEL CAN LICIT TWO VERY DIFFERENT RESPONSES, EVEN IN THE SAME INDIVIDUAL. THE OVERWHELMING CONSENSUS OF THE FORENSIC, MEDICAL AND SCIENTIFIC COMMUNITY WAS BORNE OUT AGAIN AND RE-AFFIRMED AT THIS CONFERENCE BY THE AMERICAN ACADEMY OF FORENSIC SCIENCE AND THE NATIONAL SAFETY COUNCIL COMMITTEE ON ALCOHOL AND OTHER DRUGS. BLOOD DRUG LEVELS HAVE NOT, ARE NOT, AND CAN NOT BE ESTABLISHED AS INDICATORS OR DETERMINERS OF IMPAIRMENT IN AND OF THEMSELVES.

IT MUST BE UNDERSTOOD THAT THE ROLE OF SCIENTIFIC ANALYSIS IN DETERMINING ALCOHOL OR DRUG LEVELS IN AN INDIVIDUAL, IS NOT AND SHOULD NOT BE THE PRIMARY INDICATOR OF IMPAIRMENT. THE LAW ENFORCEMENT OFFICER'S OBSERVATIONS, EVALUATIONS AND PERFORMANCE TEST RESULTS PROVIDE THE FUNDAMENTAL EVIDENCE OF THE SUBJECTS IMPAIRMENT. CHEMICAL OR SCIENTIFIC ANALYSIS PROVIDE THE CONFIRMATION.

THE REMOVAL OF THE MULTIPLE TESTS AND DRUG REFERENCES FROM HOUSE BILL 559 HAS MANY FAR REACHING EFFECTS, NOT ONLY IN THE ENFORCEMENT OF THE DUI STATUTE, IT COULD INHIBIT THE FURTHER ADVANCEMENT OF THE STATES DESIRE TO ENSURE SAFE HIGHWAYS AND TO COMBAT THE OVERALL WAR ON DRUGS.

by any other State or has been disqualified from operating a commercial motor vehicle by any other State or the Secretary.

SEC. 12010. GRANT PROGRAM.

(a) **ESTABLISHMENT.**—The Secretary may make a grant to a State in a fiscal year if the State enters into an agreement with the Secretary to participate in such fiscal year in the commercial driver's license program established by this title and the information system required by this title and to comply with the requirements of section 12009.

(b) **MINIMUM AMOUNT OF GRANT.**—The Secretary shall determine the amount of grants in a fiscal year to be made under this section to a State eligible to receive such grants in the fiscal year; except that—

(1) such State shall not be granted less than \$100,000 under this section in the fiscal year; and

(2) to the extent that any States are granted more than \$100,000 per State in the fiscal year under this section, the Secretary shall ensure that such States are treated equitably.

(c) **LIMITATION ON USE OF FUNDS.**—A State receiving a grant under this section may only use the funds provided under such grant for issuing commercial driver's licenses and complying with the requirements of section 12009.

(d) **CONTRACT AUTHORITY.**—Notwithstanding any other provision of law, approval by the Secretary of a grant to a State under this section shall be deemed to be a contractual obligation of the United States for payment of the amount of the grant.

(e) **PERIOD OF AVAILABILITY.**—Funds made available to carry out this section shall remain available for obligation by the State for the fiscal year for which such funds are made available. Any of such funds not obligated before the last day of such period shall no longer be available to such State and shall be available to the Secretary for carrying out the purposes of this title. Funds made available pursuant to this section shall remain available until expended.

(f) **FUNDING.**—There shall be available to the Secretary to carry out this section \$5,000,000 from funds made available to carry out section 404 of the Surface Transportation Assistance Act of 1982 for each of fiscal years 1989, 1990, and 1991.

SEC. 12011. WITHHOLDING OF HIGHWAY FUNDS FOR STATE NONCOMPLIANCE.

(a) **FIRST YEAR.**—The Secretary shall withhold 5 percent of the amount required to be apportioned to any State under each of sections 104(b)(1), 104(b)(2), 104(b)(5), and 104(b)(6) of title 23, United States Code, on the first day of the fiscal year succeeding the first fiscal year beginning after September 30, 1992, throughout which the State does not substantially comply with any requirement of section 12009(a) of this Act.

(b) **AFTER THE FIRST YEAR.**—The Secretary shall withhold 10 percent of the amount required to be apportioned to any State under each of sections 104(b)(1), 104(b)(2), 104(b)(5), and 104(b)(6) of such title on the first day of each fiscal year after the second fiscal year beginning after September 30, 1992, throughout which the State does not substantially comply with any requirement of section 12009(a) of this Act.

(c) **PERIOD OF AVAILABILITY; EFFECT OF COMPLIANCE AND NONCOMPLIANCE.**—

(1) **FUNDS WITHHELD ON OR BEFORE SEPTEMBER 30, 1995.**—

(A) **PERIOD OF AVAILABILITY.**—Any funds withheld under this section from apportionment to any State on or before September 30, 1995, shall remain available for apportionment to such State as follows:

(i) If such funds would have been apportioned under section 104(b)(5)(B) of such title but for this section, such funds shall remain available until the end of the second fiscal year following the fiscal year for which such funds are authorized to be appropriated.

(ii) If such funds would have been apportioned under section 104(b)(1), 104(b)(2), or 104(b)(6) of such title but for this section, such funds shall remain available until the end of the third fiscal year following the fiscal year for which such funds are authorized to be appropriated.

(B) **FUNDS WITHHELD AFTER SEPTEMBER 30, 1995.**—No funds withheld under this subsection from apportionment to any State after September 30, 1995, shall be available for apportionment to such State.

(2) **APPORTIONMENT OF WITHHELD FUNDS AFTER COMPLIANCE.**—If, before the last day of the period for which funds withheld under this section from apportionment are to remain available for apportionment to a State under paragraph (1), the State substantially complies with all of the requirements of section 12009(a) of this Act for a period of 365 days, the Secretary shall on the day following the last day of such period apportion to such State the withheld funds remaining available for apportionment to such State.

(3) **PERIOD OF AVAILABILITY OF SUBSEQUENTLY APPORTIONED FUNDS.**—Any funds apportioned pursuant to paragraph (2) shall remain available for expenditure until the end of the third fiscal year succeeding the fiscal year in which such funds are apportioned. Sums not obligated at the end of such period shall lapse or, in the case of funds apportioned under section 104(b)(5) of such title, shall lapse and be made available by the Secretary for projects in accordance with section 118(b) of such title.

(4) **EFFECT OF NONCOMPLIANCE.**—If, at the end of the period for which funds withheld under this section from apportionment are available for apportionment to a State under paragraph (1), the State has not substantially complied with all of the requirements of section 12009(a) of this Act for a 365-day period, such funds shall lapse or, in the case of funds withheld from apportionment under section 104(b)(5) of such title, such funds shall lapse and be made available by the Secretary for projects in accordance with section 118(b) of such title.

SEC. 12012. PENALTIES.

(a) **NOTICE OF VIOLATION.**—Paragraph (1) of section 521(b) of title 49, United States Code, is amended by inserting "or section 12002, 12003, 12004, 12005(b), or 12008(d)(2) of the Commercial Motor Vehicle Safety Act of 1986" after "the Motor Carrier Safety Act of 1984" and by striking out "section" the second place it appears and inserting in lieu thereof "sections".

(b) **CIVIL PENALTIES.**—Paragraph (2) of such section is amended, by inserting "(A) IN GENERAL.—" before "Except as", by inserting "(other than subparagraph (B))" before ", except for recordkeeping



U.S. Department
of Transportation

Federal Highway
Administration

DRAFT

400 Seventh St., S.W.
Washington, D.C. 20590

Refer to: HCS-20

Through: Mr. Louis N. MacDonald
Regional Administrator
Lakewood, Colorado

Mr. Roger K. Scott
Division Administrator
Helena, Montana

Mr. Duane Tooley
Chief, Driver Services Bureau
Department of Justice
303 North Roberts
Helena, Montana 59620

Dear Mr. Tooley:

Thank you for the fine cooperation extended by your staff to Ms. Robin Smith, Ms. LuAnne Hansen and Mr. Dave Miller of the Federal Highway Administration during the Commercial Driver's License (CDL) confirmation review meeting in Helena, Montana, on June 15.

Most aspects of your CDL program meet the minimum standards. However, we cannot confirm your CDL Issuance until we receive your assurances as to the satisfactory resolution of the immediate issues discussed below and until we are notified by the administrator of the Commercial Driver's License Information System (CDLIS) that the link between Montana and the CDLIS is fully operational.

Our observations on the Montana CDL program fall into two categories: immediate issues that will delay your confirmation letter if left unresolved; and long-term issues that may affect our future review of State compliance with section 12009(a) of the Commercial Motor Vehicle Safety Act of 1986.

The Immediate Issues are:

- (1) Montana's definition of a commercial motor vehicle (CMV) in Section 23.3.502 does not specify that any trailer for a Class A representative vehicle must be greater than 10,000 pounds. While the procedures manual indicates that Class A vehicles must have a 10,000 pound or greater trailer, the manual also states that some drivers can be tested with a smaller trailer. We recognize the constraints States and drivers face in finding adequate "representative" test vehicles. If you do find it necessary to test custom harvesters and mobile home transporters with smaller trailers, their licenses must be restricted. The CDLIS Driver History Record provides a restriction code "O" which can be used to restrict this type of driver from operating tractor trailers. Also, if Montana keeps articulated buses in class A, a similar restriction must also be used for those drivers.
- (2) The definition for a CMV contained in Section 23.3.502 seems to indicate that only vehicles over 10,000 pounds need hazardous materials placards and would, therefore, be subject to the CDL provisions. The procedures manual correctly indicates that any size vehicle transporting placarded amounts of hazardous materials is subject to these provisions. The Montana rules should be revised for consistency.

- (3) The definition for "tank endorsement" in Section 23.3.502 is incorrect in that it does not include tank vehicles used to transport gaseous materials. The word "bulk" should also be removed from the definition.

Long-term Issues In the course of our CDL confirmation review, we have made no judgment as to whether the State would be in substantial compliance with all 21 requirements included in Section 12009(a) of the Act. Since the States do not need to be "in substantial compliance" with these 21 requirements until the end of our Fiscal Year 1992, our formal review and determination will be made at a later time. Incidental to our CDL confirmation review, however, the following compliance issues were noted and are described below for your early information.

- (4) Montana's law states that nonresident CDL holders may operate in Montana "subject to the age limits applicable to commercial vehicle operators in this State." Most nonresidents operating CMVs in Montana will be involved in interstate commerce and will have to be at least 21 years old because they are subject to the 49 C.F.R. Part 391 requirements. On the other hand, some States will license commercial vehicle operators as young as age 16 or 17 for "intrastate" operations outside of their home States. The FHWA currently regards as a State matter any State's policy on honoring, for purposes of intrastate commerce only, out of State CDLs held by persons not qualified to operate in interstate commerce. Since 49 C.F.R. Section 391.2 does grant age exemptions to certain classes of interstate drivers, such as custom harvesters, the State of Montana will need to clarify or amend the above wording to appropriately reflect these requirements.
- (5) Montana's implied consent clause (Section 61-8-806) is only applied to a driver when a law enforcement officer has reasonable grounds to believe the driver's blood alcohol concentration (BAC) was 0.04 percent or more. The Federal rules require that drivers be subject to testing when they may have any measurable or detectable alcohol.
- (6) Montana has adopted legislation implementing disqualifications for drivers convicted of 0.04 percent BAC offenses and refusing chemical tests. The State will also need to apply the disqualification provisions to drivers convicted of driving under the influence (DUI), leaving the scene of an accident, or using a CMV in the commission of a felony. Montana's law also needs to be amended to include lifetime, rather than 10-year, disqualifications for drivers convicted of any combination of two disqualifying offenses contained in Part 383.51(b). Most of these changes are reflected in the proposed State amendments scheduled for introduction in January 1991.
- (7) The Montana legislation imposes 24-hour out-of-service periods for drivers testing at or over .04 BAC. Under the Federal rules, however, drivers must be placed out of service for 24 hours for any measurable or detectable amount of alcohol. Although MHP 391 may incorporate this, we have not seen a copy of it. Montana will need to bring its program into compliance either through a legislative or administrative rule change.

- (8) There seems to be a conflict between the sections of law which require the CDL disqualifications and Section 61-5-208. That section of law states that licenses cannot be revoked for more than 1 year except when the convictions are for violations of specific statutes.
- (9) Section 23.3.521 states that "Emergency or administrative personnel not ordinarily assigned to duties involving the operation of commercial motor vehicles may operate commercial motor vehicles without an endorsement on an emergency basis. . . ." We need clarification of this administrative rule because it seems to cover drivers not granted waivers in the Commercial Driver's License Program; Waivers; Final Disposition published in the Federal Register on September 26, 1988.

With your written assurances relating to items (1) through (3) above, we look forward to being able to issue you a CDL confirmation letter immediately upon receipt of the required notification from the CDLIS Administrator.

If you have any questions about this letter or about any other aspects of our review, please contact Ms. LuAnne Hansen or Mr. Ronald Finn of my staff at (202) 366-4009. In the meantime, thanks again to you and your staff for your enthusiasm, commitment and comprehensive effort to comply with the requirements of the CDL program.

Sincerely yours,



R. P. Landis
Associate Administrator
for Motor Carriers

cc: Barry Goleman, Manager, AAMVAnet Inc.
Russel Simmons, CDLIS Administrator

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COMMITTEE ON HB 559 Senate Judiciary

VISITORS' REGISTER

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(Please leave prepared statement with Secretary)

DATE 25 Mar 91 282

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COMMITTEE ON Senate Judiciary
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